M.R.O. 1—33,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Political DEPARTMENT.

G.O. No. 421 Press ~~Mis.~~

Dated 21. 10. ~~19~~ 1862

Not to be folded or roughly handled

No. 37. Read the following letter from CLEMENT DALE, Esq., Receiver of the Carnatic Property; to the Honorable THOMAS PYCROFT, Chief Secretary to Government, Fort Saint George, dated 9th October 1862, No. 176.

7th October 1862, No. 405, Political Department.

Para. 1. I have the honor to acknowledge the receipt of the Proceedings of Government under the date and number noted in the margin.

2. I should not have considered it necessary to address you on the subject, had it not been for the 9th para. of Mr. Miller's letter, set out in those Proceedings, in that para. the Acting Government Solicitor says, "I have since been urged *by the Receiver* and his Solicitors, as well "as by the Plaintiff AND HIS SOLICITORS, to communicate with Government on the subject, and to "solicit their consent to being made a party to the Special Case.".

3. I am not aware, whether the Honorable the Governor in Council was in any way influenced, in passing the Order contained in the Proceedings noted above, by the impression thus conveyed to his mind, that *I* had *urged* the Acting Government Solicitor to *solicit* the consent of Government to be made a party to the Special Case; in all probability that circumstance did not weigh with His Excellency in Council.

4. In penning the para. I have quoted, Mr. Miller must have been laboring under a strange misapprehension of the facts of the case, and I do not consider it right that I should permit His Excellency in Council to lie under the impression, that I had been guilty of so unseemly an act as to have "URGED" the Acting Government Solicitor to "SOLICIT the consent of Government to being made a party to the Special Case." To the best of my recollection, I never spoke to Mr. Miller on the subject of the Special Case before the argument, and only once after the argument, on which occasion he called at my chambers, and informed me that Mr. Advocate General required his Brief, which he had left on my table on the day when he mentioned to me the result of the argument, and all that then passed between Mr. Miller and myself (to the best of my recollection), was my hearing his message, and desiring a Peon to hand the Brief to Mr. Miller. I did not urge *Mr. Miller* to make *any* communication to Government, and most decidedly no such communication as Mr. Miller mentions; indeed it is obvious I should not be likely to recommend such a course. The duty I have to perform, is identical with the interests which Government have to support; and clearly it was not my duty to advocate a course by which Government would lose a decided advantage; and by which the Plaintiff as a natural consequence would be the gainer. The more especially in the case under consideration, in which the Plaintiff has no claim whatever on the generosity of Government, but quite the reverse, it being a case of all others that has nothing to recommend it to favorable consideration. The Court on the hearing was of opinion "that Government had taken these gardens as an Act of State, and declined to hear the case

Vide Mr. Advocate General's opinion.

"further AS A MATTER BEYOND ITS JURISDICTION, UNLESS the Government "became a party to it, and AGREED TO SUBMIT the matter to the Court." In other words, if the Government did not become a party to the Special Case, the Judgment of the Court would have been in my favor; but if the Government did become a party, they would thereby give to the Court a jurisdiction it did not otherwise possess; clearly, therefore, it would have been a dereliction of duty had *I* "*solicited* the consent of Government to be made a party to the Special Case," and I most unhesitatingly declare that I never did make any such solicitation or request. Holding those views, I certainly should not have held any communication on the subject with Mr. Miller, *as the Acting Government Solicitor*, inasmuch as HE WAS THE SOLICITOR FOR THE PLAINTIFF, and consequently had interests to support DIAMETRICALLY OPPOSED to those of Government; it was impossible he *could* support the interests of *both* his clients. The interests of his private client (the Plaintiff) being, as I have remarked, "*diametrically opposed*" to those of his public client (the Government), I should never therefore have been guilty of the indelicacy of communicating with Mr. Miller, in his capacity of Acting Government Solicitor, so long as he acted for and represented the Plaintiff; and I never did communicate with him, further than what I have stated. As regards the acts of my Solicitors, Messrs. Ritchie and Shaw, I

opinion had been so sought, he would have advised that no such suit could be maintained by this Plaintiff. No suit could have been maintained by any Creditor, except the Act No. 30 of 1858, or some similar provision had been passed by the Legislature. Section 8 of that Act is the Section which authorises such a course. the following is the provision. " It shall be lawful " for any Creditor or person interested in the proper Administration of the Estate and Effects of " the said Nabob, to apply for and obtain in a summary way, in the manner provided by Act 6 " of 1854, upon a summons to be served upon the said Receiver, an Order for the Administration " of the Estate and Effects of the said Nabob." Prior to the passing of the Act No. 30 of 1858, this Plaintiff had petitioned the Court for the Relief of Insolvent Debtors, and the whole of his property had vested in the Official Assignee of that Court, who under the 14th Section of the Act on the 1st of October 1858 filed a written declaration stating (I presume) to the effect required by that Section, viz.: " That he was willing *to receive in full discharge of all his claims* " against the said late Nabob, or any property to which the said late Nabob at the time of his " death was entitled either at law or in equity, or which is liable either at law or in equity to " satisfy the debts of the said Nabob, *such amount as shall be ascertained by the said Supreme* " *Court to have been justly and fairly due to him* from the said late Nabob at the time of his " death." And by Section 16 of the Act it is enacted, that " no person claiming to be a Creditor " of the said late Nabob or in respect of any property whatsoever to which the said late Nabob " was entitled either at law or in equity, or which is liable either at law or in equity, to satisfy " the debts of the said Nabob, shall be entitled to avail himself of the provisions of Section 14 " in respect of a part only of his claims upon the said late Nabob, or upon any such property as " aforesaid." The claim so preferred by the Official Assignee was heard on the 31st of May and 1st of June 1860, under the provisions of the 22nd Section. It was not disposed of under the 21st Section, by Government offering a specific sum, but " upon debate of the matter," when the Court (by Order dated 1st June 1860), ordered me to pay " to the claimant Benjamin Brooks " as such Assignee of the said Insolvent Ghoolam Mahomed Naiwood Khan the sum of Rupees " 13,794-0-4 *being* the amount *justly and fairly due* to the Insolvent Estate of the said Ghoolam " Mahomed Khan from the Estate of the late Nabob of the Carnatic." That sum was paid by me to Mr. Brooks on the 22nd June 1860, and the Plaintiff has since obtained his final discharge from the Court for the Relief of Insolvent Debtors. The full " amount that was justly and fairly due" to the Plaintiff having been paid, is he any longer a " Creditor or person interested " in the proper Administration of the Estate and Effects of the late Nabob?" If not, can he, under Section 8, institute an Administration suit? His claim to the land does not, as I submit, constitute him a " creditor or a person interested in the proper Administration of the Estate and Effects of the said Nabob;" but if it did, then I submit he would have been barred from further prosecuting his claim by the declaration filed by the Official Assignee, and by the 16th Section; I therefore submit the Plaintiff could not now maintain any suit under Section 8; *and if* he had any right of suing under his two Deeds, he has, I submit, debarred himself from that course by having filed " the Special Case."

No. 38. ORDER THEREON, 21st October 1862, No. 421.

To be recorded.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. T. O'Connor.

Political Department

No 474

Extracts from the Minutes of Consultation dated 27 November 1855.

Read the following letter

No 318.

From

The Acting Honorable Company's Solicitor

To

The Chief Secretary to Government.

Sir

With reference and in obedience to the Extract from the Minutes of Consultation noted in the Margin I have now the honor to submit for the information of The Right Honorable The Governor in Council Copies of the following papers viz.t

The instructions laid by me before the Advocate General.

The two Deeds of Gift therein mentioned and

The Advocate General's opinion upon the question referred to him by the Minutes of Consultation above noted.

I also return the Original papers which accompanied such Minutes of Consultation.

I have &c.
(sd) J R Boyce
Actg Hon.ble Comp.y's Solicit.r

M.C. dated 18th October 1855 No 431 Political Department

Madras
21st November
1855

Instructions

From enquiries which the Acting Company's Solicitor has made, he has reason to believe that the late Nabob executed 2 (separate) Deeds of Gift of the property at Arcot and Trichenopoly in favor of Ghoolam Mahmood otherwise called Seyamut-

What, that the Consideration for such Gifts as recited in the Deeds themselves is "the faithful services" of the Donee, that these 2 Deeds of Gift were delivered to the Donee, that the Donee was never in possession either by himself or his Agents of any portion of the property comprised in these Deeds- that the Donee afterward mortgaged the property at Arcot and Trichenopoly to Mazzzar Ally who subsequently sued him in the Supreme Court and obtained an Ex parte Verdict against him, upon which Judgment was signed, execution issued and the Sheriff of Madras instructed to sell Ghoolam Mahmood's Estate and Interest in the property in question- and that the Sheriff of Madras has proceeded under the provisions of Clause 5 of Section I of Act VI of 1855-

What Consideration Ghoolam Mahmood in fact received from Muzzar Ally for the above Mortgage; or whether any portion of such Consideration went into the Treasury of the Nabob or was applied for his use the Acting Solicitor is not of Course able to ascertain-

The Deeds of Gift above mentioned are in the possession of Muzzar Ally-

The property in question was a part of the Ancestral property which descended to the late Nabob.

Copy Opinion

Mazzar Ally having obtained verdict Judgment and Execution in due form of law against Ghoolam Mahmood, it is the duty of the Sheriff and I know of no legal steps that can be taken to prevent his fulfilling it, to sell Ghoolam Mahmood's Estate and interest in the property in question-

What that "Estate and interest" legally amounts to, and Consequently what the purchaser at the Sheriff's sale would take, is however a very different question, and appears to me to be open to several and important objections, as soon as a party can be found who is competent to raise them-

1st The Gardens being as I understand, Circars property, whether it was competent to the late Nabob to alienate them at all?

2nd Supposing he could do so, to what extent he

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What that "Estate and interest" legally amounts to, and Consequently what the purchaser at the Sheriff's sale would take, is however a very different question, and appears to me to be open to several and important objections, as soon as a party can be found who is competent to raise them.

1st. The Gardens being as I understand, Circar property, whether it was competent to the late Nabob to alienate them at all?

2nd. Supposing he could do so, to what extent he

he could do so. If Circar properly had he more than a life interest in them - and could he alienate them beyond the period of his own natural life - and on his death has not his successor, whoever he may be, a right to resume them?

3ᵈˡʸ Whether the Consideration mentioned in the Nabob's written instrument is a good one? Between blood relations "natural love and affection" is a good consideration in English law but I greatly doubt whether "faithful services" from a man paid for his service could be held a good consideration under any laws

4ᵗʰˡʸ Whether Ghoolam Mahmood never having reduced the gardens into possession, and never having given possession of them to Muzzar ally could give him a legal title to them by a mere instrument in writing?

5ᵗʰˡʸ Whether the Gardens were granted as Enam, and if so, whether Enam lands can be legally sold.

All these are questions very fit to be raised as soon as it is settled who is to be the Heir or Successor to the late Nabob Whether Prince Azeemjah, or the Honorable Company - But except in the Capacity of Heir or Successor to the late Nabob, it appears to me that Government or the Honorable Company have at present no locus standi at all, and could not be heard in Court to raise or support any of these objections or in fact take any step whatever in the matter

November 20ᵗʰ 1855. /signed/ T. S. Smyth.
Advocate General

True Copy
/sd/ J. R. Boyd on
Acting Honorable Compy's Solicitor

In consideration of the faithful services rendered by Ghoolam Mahmood Son of Mahommud Yoosof to me I hereby make him a present of my Garden &c. situated at the Village of Arcot consisting of 181 Cawnies 10 Ground 2,100 Sq. Feet 5 Tanks 1 Vale and some Trees, He the Ghoolam Mahmood and his heirs may possess it and appropriate its revenues to his and their use from generation to generation this is therefore written and delivered on the 22ᵈ Rebee Oossanee of the Hijeree 1261 as a Purwanah for future reference.

Wallajah Omdatul Omrah Mookh
-tarul Mookh Serajood Dowlah Ghoolam
Mohummud Ghouse Khan Bahadoor
Bahadoor Jung.

22ᵈ Rebee Oossanee of Hijeree 1261 - -

True Copy
/signed/ J. R. Boyd on
Acting Hon'ble Compy's Solicitor

In consideration of the faithfull services of Gholam Mahmood son of Mahummud Ecoob I hereby make him a present of these pieces of land &c consisting of 31 Cawnies 3 Ground and 1320 S. feet and a House &c Situated at the Village of Trechnaupulle - He the Gholam Mahmood and his heirs may possess it and appropriate its revenues to his and their use from generation to generation this is therefore written and delivered on the 28th Jamadeeoolawal of the Hijree 1261.

Wallajah Oomdatul Oomrah Mookh-
28th Jamadeeoolawal of the Hijree 1261 - } tarul Mookh Seerajood Dowlah Gholam
Mahammud Ghouse Khan Bahadoor
Bahadoor Jung

(True copy)
pegd J. H. Boyson
Acting Hon'ble Company's Solicitor

Resolved that the above letter and its accompaniments be communicated to the Government Agent.

The Agent should impress upon the Nowaub that it will be for him as far as possible to maintain possession of such properties as those in question as belonging to the Circar and not alienable by the late Nabob

(True Extract)
pd J. Paycroft
Chief Secretary

To.

The Government Agent
at
Chepauk.

(A True Copy)
pegnd C. Balfour.
Government Agent.

No. 167

My Dear Ritchie

I have seen the Advocate General who has told me the result of the hearing of the Special Case so far as it has gone, and he advises that I should ask you to write to Messrs. Boyson and Miller and request them, if they desire that the Secretary of State should consent to communicate with Government to that effect, without delay. Will you kindly do this forthwith as much time has been already lost.

Believe me
Faithfully Yours
Signed C Dale
Court House Septr. 17th/62

Enclosure 1

Bill Item 459

Pol. 1862 Sept.

From The Asst. of the C.S.

To The Chief Secy. to Govt.

Date 9th October 1862

Rec'd 11th

No. 176

(with 2 Enclosures)

No. 459

Making certain Observations & remarks in ref. to G.O. no. 405 of 7th Inst. in which Govt. accord their consent & being made a party in two special Cases Wm. Coleman & Mahomed Baksh and Khan Asst. Magistrate Dale.

Submitted — 21 Octr. 62

To be recorded

GP

Rec'd 31 October 63 No. 21022
" 27th Nov. " 21022
" 5th October 63 & 405

37-38