DR. O. 1—32,000.—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Political DEPARTMENT.

G.O. No. 468 Press Mis

Dated 6 — 11 — 1862

Not to be folded or roughly handled

Proceedings of the Madras Government, Political Department, 6th November 1862.

Read the following papers:—

No. 11. From T. SYDNEY SMYTH, Esq., Advocate General; to the Honorable T. PYCROFT, Chief Secretary to Government, Fort Saint George, dated Madras, 22nd October 1862.

I have the honor to report, for the information of His Excellency the Governor in Council, the result of the trial of the last of the claims against the Estate of the late Nabob of the Carnatic.

2. The claim was preferred by Rajah Ruggonada Ram of Hyderabad (Deccan) in respect of a sum of Rupees 92,571-13-9, less Rupees 8,000 credited as paid (equivalent therefore to a balance of Rupees 84,571-13-9 with interest at 6 per cent. from 1849*) alleged by the claimant to have been due to him by Emaum-oon-Nissa Begum, the Nabob's grandmother, under a decree of the Makamah Court of His Highness the Nizam of the Deccan, and the payment whereof the claimant alleged that the late Nabob had, by a letter dated 30th August 1853, promised to make good "in consideration of a Deed of Gift executed by the said Begum "in her lifetime to the Nabob, by which she gave him all her property real and personal;" in part performance of which promise the Nabob, through Eswaradoss, Superintendent of His Highness' Jaghire at Hyderabad, paid the claimant four sums of Rupees 2,000.

13 years' interest at 6 per cent., October 1849 to October 1862	,, 62,790- 0-0
	1,47,361-13-9

*The total amount is therefore—Principal...Rs. 84,571-13-9

3. There was a Deed of Gift (exhibit L) from the Begum to the Nabob, dated 12th October 1849, *not* however of all her property real and personal, but merely of her share in the estate of her daughter Khyroon-Nissa Begum the Nabob's mother. The Dewan's evidence about this transaction was as follows:—"This is the Deed of Gift. There was an application by the Nabob "to Emaum-oon-Nissa to give up her share to Khyroon-Nissa: the Nabob said, 'I will give up "'my share to my wife—you also should not claim your share.'"

4. The Nabob had married his cousin-german, and she was, like himself, a grand child of this Emaum-oon-Nissa. The transaction therefore was simply this: the Nabob said to the Begum—"if you will give your grand-daughter your share in this estate, I will give her mine "also."

5. The Nabob's wife survived him. The Nabob personally gained nothing whatever; on the contrary, he gave up his legal share of his mother's estate. The Nabob's wife, by Mahomedan law, was competent to hold property separate from and independent of her husband.

6. Except this share, which passed not to the Nabob but his wife, I could find nothing to show that the Nabob had ever received anything from Emaum-oon-Nissa, or from her estate, still less from the claimant.

7. There was indeed a letter written by the Dewan, dated 18th August 1852, by order of the Nabob, wherein the Nabob promised to pay the claimant, *provided* the claimant would put him in possession of a certain Jaghire which had belonged to Emaum-oon-Nissa. This condition, however, so far as I could learn, had never been complied with.

8. There were also letters showing that the Nabob intended, and had promised, on the ground of *relationship* (for the family honor, as it were) to pay Emaum-oon-Nissa's debt.

9. I investigated this case very carefully with the help of a very full report from Dr. Balfour, the Government Agent, whose assistance in this as in all other cases was most valuable; and afterwards on the 10th January 1861, I had a long interview with the claimant's Counsel, when the Dewan, Madar-ool-Omrah attended (Dr. Balfour again assisting as Interpreter); but I could discover nothing to carry the case beyond what I have already mentioned.

10. I was of opinion that these grounds did not suffice to bring the case within the provisions of Act XXX of 1858. Sections XIV and XXII limit the operation of the Act, in the case of *moneys* to—"the amount of moneys proved to have been actually advanced to or paid for the

"use of the Nabob"—and, in the case of *goods* supplied—"to the amount proved to have been "their fair and actual value at the time." I could find no proof that any money had ever been advanced to the Nabob or for his use, nor any goods so supplied.

11. I therefore resolved not to admit this claim.

12. The claimant made a strenuous effort to have his own and his brother's evidence taken by commission at Hyderabad. The commission was granted to examine his brother, but refused as to the claimant himself, as I undertook that the Resident should obtain full permission for the claimant to attend in person. The Resident obtained this permission, and reported accordingly; but the claimant declined to avail himself of it.

13. The Dewan having returned from his pilgrimage to Mecca, after a year's absence, the claim was heard on the 30th September, and 1st and 2nd October. The case was not concluded till late on the 2nd, and as the Court's sittings ended on that day, and did not recommence till to-day, judgment could not be delivered till this morning.

14. The only remarkable feature in the claimant's evidence at the trial was the stress laid on two exhibits (marked I, dated 23rd September 1849, and J, dated 15th September 1853) purporting to have been written by one Itibar Jung, Khansamah of the Nabob's mother's household, by order of the Nabob.

15. These I believe to be both forgeries. They were of course, like all the other forged documents, produced during the trials of similar claims, called for by the claimant as genuine papers which would be found on searching the Nabob's dufters, or records—and of course were so found—these, like most similar documents, turning up in the dufters of the Meersamani Hoozoor Cutcherry, of which Tej-Bhan was the head; and being all vouched by him as genuine.

16. These purported to be letters, each authenticated by a few words in the Nabob's handwriting, approving of the contents, and ordering letters conformable thereto to be written by Itibar Jung to the claimant; *but*, no such letters were produced by the claimant, or shown to have been ever written or sent to him, nor was any attempt made to account for their non-production.

17. Exhibit I bore the words "*It is well*", and exhibit J the words "*It is proper to acquaint him;*" and Tej-Bhan of course swore that both sentences were in the Nabob's handwriting. As to J, however, the claimant's own chief witness, the Dewan, who had all along strongly advocated the payment of this claim (chiefly, however, as it seemed to me, as a debt of honor, and also because the Nabob's wife had derived some advantage under her grandmother's Deed of Gift) was positive the handwriting was *not* the Nabob's; and so also said Terazish Khan Bahadoor, Rajah Eswaradoss, and Rajah Streenavassa Row, who were all familiar with the Nabob's handwriting. The words on I were said by all these witnesses to be in the genuine handwriting of the Nabob; *but* the latter three insisted from the minute size of the paper, and the unusual *direction* in which the words "It is well" were written, that the paper must have been torn off from some genuine petition, and its present contents written afterwards.

18. That this was probably the case appeared from several considerations. No one was produced as having seen either I or J written—either the body, or signature, or the (alleged) Nabob's writing on either—or to speak to Itibar Jung's signature, though his son was in Court. The handwriting of the two signatures was moreover quite different. Tej-Bhan was the *only* person who spoke to having ever seen either I or J in the lifetime of the Nabob. I have already mentioned that though both I or J professed to be petitions soliciting the Nabob's authority for Itibar Jung to write letters to the claimant, and to bear the Nabob's sanction, neither document appeared to have been ever *acted* upon. No such letter to the claimant was produced or accounted for. Both I and J contained recitals that the Nabob *had received property, given up by the claimant, and in consideration thereof had promised to pay* (and this was clearly the sole object of these forgeries); but no evidence was forthcoming that the Nabob really had received any such property. Moreover, I was dated 23rd September 1849, and promised *immediate* payment at the rate of Rupees 4,000 a year; whereas it was admitted that *no payment* was made till August 1853, or *four years afterwards*, and yet it was not suggested that the claimant had

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ever remonstrated against the delay, or the breach of the alleged promise. The recitals in I and J were precisely similar; and J being shown, even by the Dewan, to bear a forged endorsement, this necessarily threw the gravest suspicion on I. The form of the contents moreover was unusual; instead of simply stating facts, and asking "what is *the Nabob's order hereupon*," or words to that effect, I and J each contained a complete letter, [with recitals much like the celebrated one in the critic] and asked permission to write that identical letter. Lastly the Dewan, through whose hands *all* the *genuine* part of the business had passed, viz., the Deed of Gift, orders for payment and several letters, had never seen nor heard of either I or J; and not only this, but one of the Dewan's letters (exhibi H), dated 1st August 1853, commenced thus:—"It appears by the *verbal* statements of Itibar Jung," &c., &c.; thus almost pointedly ignoring any *written* statements coming from this person.

19. On these grounds I objected to both these documents—especially to J, which I submitted was *not* only not proved to bear the Nabob's authentication, but *was* proved *not* to bear. The Court however considered the objections to apply rather to the *weight* of this evidence than to its *admissibility;* and certainly Tej-Bhan did swear distinctly that J did bear the Nabob's handwriting.

20. I am happy to say that the Court has entirely rejected the claim with costs, and held the document J to be a forgery—thus saving to Government Rupees 1,47,361-13-9.

21. In my letter to Government under date the 18th December 1860, I estimated that the eleven claims then outstanding would be satisfied for two lakhs of Rupees (Rupees 2,00,000). They have now been all satisfied for Rupees 1,80,378-12-7, being Rupees 19,621-3-5 less than my estimate.

22. In their Order under date the 19th January 1861, Government mentioned that I had succeeded in satisfying the total amount of these claims, viz., Rupees 122,08,513-6-11, for, in round numbers, 33 lakhs of Rupees; the actual amount now is Rupees 32,71,989-3-2, or Rupees 28,010-12-10 less than 33 lakhs, which saving is just Rupees 3,000 in excess of the sum struck off by the Secretary of State, Sir C. Wood, from the compensation recommended for me by the Government of Madras.

23. I trust that this conclusion will be considered satisfactory by Government, and by the Secretary of State.

No. 12. From THOMAS SYDNEY SMITH, Esq., Advocate General; to the Honorable T. PYCROFT, Chief Secretary to Government, Fort Saint George, dated 22nd October 1862.

As I have this day forwarded to Government my final Report upon the only remaining claim against the Estate of the late Nabob of the Carnatic, I would take this last opportunity to solicit Government to lay before the Secretary of State one point connected with my claims to the compensation for which the Madras Government so strongly recommended me; a point which, it occurs to me, may not have been put to the Secretary of State in a sufficiently plain and distinct light. This Government, I believe, was aware of the fact to which I allude, which was my reason for not thinking it necessary to make prominent mention of it in my official letter to them; but perhaps the Secretary of State was not equally aware of it.

2. When the Secretary of State reduced what this Government expressly stated to be, in its opinion, a "very moderate remuneration" for me, from Rupees 55,000 to Rupees 30,000, he may possibly not have known that the actual amount of the professional losses entailed upon me by the long and extra labors by which Government benefited so largely, exceeded by more than Rupees 15,000 the sum recommended for me by this Government, my actual losses during the period in question having exceeded Rupees 70,000.

3. I gratefully accepted the recommendation of this Government for the sum of Rupees 55,000, though leaving me an actual loser of above Rupees 15,000, having been informed that, in recommending only Rupees 55,000, Government had been influenced partly by the then low

state of the Indian finances, and partly by a desire to name a sum so moderate as to preclude any objection on the score of its amount. I was also influenced (as I mentioned at the time to Sir Charles Wood) by the circumstance of my being then a candidate for a seat on the Bench of the late Supreme Court

4. The Secretary of State's decision however has left me an actual loser of above Rupees 40,000.

5. I cannot think that he was fully aware of this, that he intended to leave me a loser to this large amount.

6. In admitting, as he has done, that I was *entitled* to *some* compensation, he has virtually (I would respectfully submit) admitted my right to a *fair* compensation. He has admitted, at least to some extent, that as I have no retiring pension, as my whole time does not belong to Government, but, on the contrary, my income from private practice is the only source whence I can provide the means of retiring, it would not be *just* or *equitable* to deprive me of that income without *some* compensation. He would, I am sure, admit that it would not have been just to deduct Rupees 40,000 from my official salary in return for extra services, by which Government, as shown in their Despatch under date 19th January 1861, paras. 2 and 3,* has forfeited to the extent of £891,690 Sterling—or, including the costs saved in the 391 cases settled without litigation, nearly one million Sterling;—can it then be just to inflict an equal loss upon me by depriving me of more than two years and a half of my private practice, (always much more valuable than my salary) while, during all that time, Government was benefitting largely by my extra labors, involving the sacrifice of that private practice?

	Rs.
* Total amount claimed...	122,08,500
Settled for...	32,91,610
Amount saved to Government	89,16,890

7. The question therefore, I most respectfully submit, is really reduced to this—*what is a fair compensation*? Or, in other words, was the amount recommended by Government "a *very* moderate remuneration," as Government expressly stated it to be, or did it exceed those limits?

8. My professional income, from private practice, on an average of several years before Act XXX of 1858 (including several years *before* I became Advocate General) varied from Rupees 35,000 to Rupees 46,000 a year. Rupees 40,000 is therefore a fair average; this for two years and a half (the real time, however, as Government has already stated to the Secretary of State, was two years and nine months) amounts to Rupees 1,00,000.

† Rs. 40,000 × 2½	=	1,00,000
Deduct.....	9,000	
	12,000	
	8,000	
		29,000
		71,000

9. After Act XXX of 1858 was passed, my professional income for the first year fell to Rupees 9,000, for the second to Rupees 12,000, and the next six months was barely Rupees 8,000. My total actual loss therefore was Rupees 71,000.†

10. Had the whole amount recommended for me by Government been sanctioned by Sir Charles Wood, I should still have lost above Rupees 15,000; as it is, I am a loser of above Rupees 40,000.

11. When these cases began, I was the servant of the East India Company, and I always understood that at all events I should not be allowed to be a loser, and I was satisfied to rest on this understanding. Had I had any doubts on the subject, had I consequently thrown up my Office of Advocate General, and accepted the Retainers and Briefs of the other side [as Mr. Advocate General Compton, afterwards Sir Herbert Compton, did in 1829-30, in Calcutta, in the great case of the forged signatures to Government Securities, when he defeated the Government; or as Mr. Norton did here in 1857 when he threw up the Government Pleadership, and accepted the Brief of the Ranee of Tanjore] I should certainly have gained largely by so doing. I trust that Sir Charles Wood will not think it just that, for *not* having done so, I should be left, as I now am, a loser of about Rupees 40,000, at the close of a long and not unsuccessful service as the Advocate General of this Government.

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6th November 1862.

No. 13. MINUTE BY THE HONORABLE W. A. MOREHEAD, dated 23rd October 1862.

This letter should be sent Home with a strong recommendation from this Government that the compensation originally advised by us, should now be conceded.

2. The case as explained in this present letter clearly shows that the Advocate General has been, by the discharge of duties, unconnected with his own, a heavy loser; whilst the State has largely benefited by his labors. The strong point, and one which cannot be got over in my opinion, is the duty performed out of Court by the Advocate General as an unpaid Commissioner, whereby somewhere about 400 claims, I believe, were disposed of—thus saving Government a heavy outlay in Law costs, and getting at once rid of claims, which would otherwise have been pending for years.

3. I cannot imagine that when the Home Authorities fully realize the fact that the Advocate General has been mulcted in a large sum of money, by performing work for the Government which formed no part of his official duty, they will continue to refuse to deal fairly with him, and allow him to be a loser by his exertions on behalf of Government.

(Signed) W. MOREHEAD.

I concur.

(Signed) E. MALTBY.

No. 14. ORDER THEREON, 6th November 1862, No. 448.

In the first of the letters above recorded the Advocate General submits his final report upon the only remaining claim against the Estate of the late Nawab of the Carnatic, preferred by Rajah Ruggonada Ram of Hyderabad in respect of a sum of Rupees 84,571-13-9, with interest from 1849 at 6 per cent., making in all Rupees 1,47,361-13-9. The claim, it is stated, was heard on the 30th September and 1st and 2nd October, and the case was not concluded till late on the latter day. The result is, that the Court has entirely rejected the claim with costs.

2. This result the Government consider to be mainly owing to the very careful investigation of the case by the Advocate General, as also to the valuable assistance rendered by the late Chepauk Agent, Dr. Balfour, in furnishing for the information of the Law Officers, a full report on the matter of the claim. It is very gratifying to notice that the outstanding claims against the Carnatic Estate, which were estimated by Mr. Smith at two lakhs of Rupees, have now been all satisfied for Rupees 1,80,379, or Rupees 19,621 below his estimate.

3. The Governor in Council resolves to bring the result of the Proceedings in the case reported by the Advocate General to the notice of the Right Honorable the Secretary of State for India, in reference to para. 4 of his Despatch dated 29th June, No. 9 of 1861.

4. In his second letter Mr. Smyth requests the Government to lay before the Secretary of State one point connected with his claim to the amount of compensation which was recommended to be granted to him; a point which, he thinks, may not have been submitted to the Home Government in a sufficiently plain and distinct light. It relates to the actual amount of the professional losses entailed upon him by the long and extra labors devoted to the interests of the State, which is stated to have exceeded Rupees 70,000 or Rupees 15,000 more than the amount of remuneration recommended to the Secretary of State by this Government, and 40,000 Rupees above that actually granted.

5. The case as explained in this letter clearly shows that the Advocate General has, by the discharge of duties unconnected with his own proper duty, been a heavy loser, whilst the State has largely benefited by his labors. The point which, in the opinion of Government, is of the greatest weight, is the duty performed out of Court by the Advocate General as an unpaid Commissioner. Four hundred and thirteen claims, amounting to Rupees 122,08,500, have been settled for Rupees 32,91,610—391 out of the 413 having been settled out of Court. The State has profited to the extent of Rupees 89,16,890 = £891,690, or including the costs saved in the 391 cases settled without litigation, nearly one million Sterling—thus saving Government a heavy outlay in Law costs and at once getting rid of claims which would otherwise have been pending for years.

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6th November 1862.

6. The Governor in Council cannot think that when the Home Authorities fully realize the fact that the Advocate General has been a loser to a large amount, by performing work which formed no part of his official duty, they will continue to withhold their sanction to the full amount which was recommended by this Government as a very moderate remuneration for his extra labors, and he resolves in reference to Mr. Smyth's great exertions on behalf of Government and the successful termination of his labors, to bring his case again under the consideration of the Right Honorable the Secretary of State, and strongly to recommend that the compensation originally proposed may now be conceded.

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

Exd. T. McMootry.

Memo

I forward these two letters just received from the Advocate Genl at once, as I know that Mr Smyth is anxious that the members of Govt should see them as soon as possible. I do not deter a thing to find up the previous correspondence as I believe that the members of Govt. have a sufficient recollection of it. 22d Oct. [illegible]

This letter should be sent home with a strong serious mandatory from this Govt that the compensation originally advised by us, should now be conceded.

The case as explained in this present letter clearly shows that the A. G. has been by the discharge of duties, uncommonly at the with his own, has been a heavy loser whilst the State has largely benefited by his labors — the strong point & one which cannot be got over in my opinion, is thirdly performed out of court, by the A. G. as an unpaid form 2 missioner, whereby — somewhere about 400 claims — Helena, was disposed

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by his Secretary's [illegible] Govt
Frolic
230. - [illegible]

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letters from the Advocate General

(Here enter 22nd October 1862)

Read minute by the Hon'ble W. Thackeray

Here enter 23d Oct/62

Order thereon 6th November 1862 No. 448.

In the first of the letters above recorded the Advocate General submits his final report upon the only remaining claim against the Estate of the late Nawab of the Carnatic, ~~[illegible]~~ preferred by Rajah Ruggonada Ram of Hyderabad in respect of a sum of Rs 84,571-13-9, with interest from 1849 at 6 per cent ~~[illegible]~~ making in all Rs 1,47,361-13-9. The claim, it is stated, was heard on the 30th September and 1st and 2d October, and the case was not

not concluded till late on the latter day. The result is, that the Court has entirely rejected the claim with costs.

2. This result the Govt. consider to be mainly owing to the very careful investigation of the case by the Advocate General, as also to the valuable assistance rendered by the late Chepauk Agent Dr. Balfour, in furnishing for the information of the Law Officers, a full report on the matter of the claim. It is very gratifying to notice that the outstanding claims against the Carnatic Estate which were estimated by Mr. Smyth at two Lakhs of Rupees, have now been all satisfied for Rs 180,379 or Rs 19,621 ~~less than~~ below his estimate.

3. The Governor in Council resolves to bring the result of the Proceedings in the case reported by the Advocate General to the notice of the Right Honorable the Secretary of State for India in

in reference to para 4 of his Despatch dated 29th June No. 9 of 1861.

4. In his second letter Mr. Smyth requests the Government to lay before the Secretary of State one point connected with his claim to the amount of compensation which was recommended to be granted to him, a point which, he thinks, may not have been ~~put~~ submitted to the Home Government in a sufficiently plain and distinct light. It relates to the actual amount of the professional losses entailed upon him by the long and extra labors devoted to the interests of the State - which is stated to have exceeded Rs 70,000 or Rs 15,000 more than the amount of remuneration ~~which was~~ recommended to the Secretary of State by this Government + and 40,000 R above that actually granted.

The

5. The case as explained in this letter clearly shews that the Advocate General has, by the discharge of duties unconnected with his own proper duty, been a heavy loser, whilst the State has largely benefitted by his labors. The point which, in the opinion of Government, is of the greatest weight, is the duty performed out of Court by the Advocate General as an unpaid Commissioner.

Four hundred and thirteen ~~[illegible]~~ claims amount=ing to Rs 12,208,500 have been settled for Rs 3,291,610, ~~and~~ + The State has profited to the ex=tent of Rs 8,916,890 = £ 891,690. or including the costs saved in the 391 cases settled without litigation, nearly one million Sterling - thus saving Govern=ment a heavy outlay in Law costs and at once getting rid of claims which would otherwise have been pending for years.

+ 391 out of R 413 having been settled out of Court -

The

6. The Governor in Council cannot think that when the Home Authorities fully realize the fact that the Advocate General has been a loser to a large amount, by performing work which formed no part of his Of=ficial duty, they will con=tinue to withhold their sanction to the full Amount which was recommended by this Government as a very moderate remu=neration for his Extra labors, and he resolves in reference to Mr. Smyths great exertions on behalf of Government and the successful termination of his labors, to bring his case again under the consideration of the Right

Honorable

Honorable the Secretary of State, and strongly to recommend that the compensation originally proposed may now be conceded.

JJO

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To the Advocate General

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Political Letter to Engd 7th Novr
No 15 of 1862

Political 1862. Department.

No. 448

PROCEEDINGS OF GOVERNMENT,

Fd 578

Dated 6th November 1862

Observing that Govt resolve to bring the result of the trial of the last of the claims of the Nabob of the Carnatic reported by the advocate General to the notice of the Right Honorable the Secy of State for India and recommending to the Home authorities the advocate Genls claim

7876] Madras—Printed at the Government Press.

for compensation

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c 30 Oct
a 1 Novr