

MADRAS RECORD OFFICE.

Government of Madras.

Political DEPARTMENT.

G.O. No. 449

Press
~~Mis.~~

Dated

6-11-1862

Not to be folded or roughly handled

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

No. 15. Read the following letter from JOHN MILLER, Esq., Acting Government Solicitor, Madras; to A. J. ARBUTHNOT, Esq., Chief Secretary to Government, Fort Saint George, Madras, dated 29th October 1862, No. 473.

1. With reference to my letter of the 25th of September last, No. 426, and the Proceedings of Government noted in the margin, I have now the honor to report for the information of Government, that the claim of Rajah Ruggoonada Ram Bahadoor, against the late Nabob's Estate under Act XXX of 1858, was investigated by the High Court on the 30th ultimo, and 1st and 2nd instant, and that on the 22nd idem, the Court dismissed the claim with costs.

2. I have deferred sending in this report till I could obtain a copy of the Judgment delivered by the Court; this copy I only received yesterday afternoon, and I now have the honor to forward a copy of it, for the information of Government.

3. I feel that it is only due to Dr. Balfour that I should prominently bring to the notice of Government that he rendered the Law Officers of Government much valuable aid in resisting this claim.

COPY—JUDGMENT.

This is a claim filed under Act XXX of 1858, in which the claimant seeks to recover a balance of Rupees 84,371-13-9 and interest, as justly and fairly due to him from the Estate of the late Nabob of the Carnatic, on account of a Judgment debt due to the claimant by Emaum-oon-Nissa Begum, the maternal grandmother of the late Nabob, and the amount of which Judgment debt, it is alleged the late Nabob personally undertook to pay to the claimant in consideration of a Deed of Gift executed by the said Emaum-oon-Nissa to the Nabob of all her property real and personal.

The case was fully heard during the last sittings of the Court, and two questions have been raised for our consideration and Judgment. First, whether upon the documentary and other evidence, the claimant has established a personal liability on the part of the late Nabob, legal or equitable to pay to him, the claimant, the balance of the Judgment debt and interest; and secondly, whether the liability, if established, was of such a nature as could be enforced against the Nabob's Estate under the provisions of Act XXX of 1858.

Upon the first of these questions, after considering the whole effect of the evidence, we are of opinion, that the claimant has failed to make out a personal liability to him on the part of the Nabob for the payment of the debt in question; and being of this opinion, we are relieved from considering the second question which is not only unnecessary as regards this case, but probably will not arise again.

We can entertain no fair doubt that Emaum-oon-Nissa was indebted to the claimant and that he had obtained a decree for the debt, and that such debt was brought to the notice of the late Nabob, and that with his sanction, four payments of Rupees two thousand each were made in respect of it. Nothing can be clearer or more free from doubt than the transactions in 1853 evidenced by the documents marked A, B, F, G, H, K, 1 to 4, the genuineness of which documents is undisputed. A is the earliest of these documents written after the death of Emaum-oon-Nissa. It is a petition dated 16th July 1853, by the Dewan to the late Nabob, mentioning the debt of the claimant as due by the late Emaum-oon-Nissa, but "now undertaken by Ushruff-oon-Nissa" and stating that the Steward of the Palace of Mahli Khas had arranged with the claimant to receive an annual instalment of four thousand Rupees, and that Her Highness Mahli Khas was urging the instalment to be fixed out of the arrears of the allowance of Emaum-oon-Nissa.

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orders from the Nabob, is carried out through the Istafa Cutcherry an arrangement which as we have before pointed out is at variance with the supposition that the late Nabob incurred, or intended to incur a personal liability to the claimant for the debt in question, and it is quite clear that the Dewan never had the document (I) brought to his notice in any way either by the Nabob or any one else before issuing the order which brought about the Istafa Cutcherry proceedings. Had the case then stood here without the document (J) there would have been, we think, no such apparent connection between the document (I) and the subsequent proceedings through the Istafa Cutcherry as to afford any support to the claimant's case. But then comes the document (J) which seems to have been put forward as the book which is undoubtedly wanting in the case. This document, dated the 15th September 1853, is somewhat singular. It recites to the late Nabob the substance of a communication which had been made by the same petitioner Itabar Jung to the claimant (of which there is otherwise no evidence) to the effect that as the deceased Begum had given her large share in the estate to His Highness, the payment of her debt had become very necessary to the Circar, and in consequence he (the Nabob) had taken the payment of the claimant's debt upon his charge, and ordered four thousand Rupees a year to be paid from the Circar until liquidated. In effect a recital of past liability—now treating this document as genuine, unless it is to be taken to refer back to the document (I), without regarding at all the intermediate documents and proceedings, there is really nothing to support the statement therein made of a personal undertaking by the late Nabob to the claimant.

But then it is used and relied upon as a direct acknowledgment and admission by the late Nabob of his liability to the claimant, and this raises the question of its genuineness as a document sanctioned and assented to in its terms by the Nabob. And upon the evidence before us we cannot come to any other conclusion than that the claimant has failed to make out that the written words at the head of this document are the genuine handwriting of the Nabob. And these words are the only evidence offered of the late Nabob's assent to its terms or even his knowledge of the document, for it is quite clear that the Dewan was as wholly ignorant of its existence as he was of the document (1), and there is no evidence to show by whom the body of either of these documents was written. No reliance then, we think, can be placed on this document (J), and we are compelled upon consideration of all the circumstances in evidence to say that there is strong reason for believing that it is, so far as regards the purpose for which it has been used in this case, a fictitious document.

Upon the whole then we are of opinion that the claimant has failed to establish such an undertaking or personal liability to him on the part of the late Nabob as entitles him under the Act to recover the sum claimed from the Nabob's Estate.

As regards the question of costs, it is urged that the claimant laid his whole case before the Government Officers, and so he did, but they repudiated and resisted the claim, and we do not see (particularly in the absence of the claimant as a witness) how we can disconnect him from what appears to be an attempt to support the case by fictitious evidence. In the former case alluded to before Sir A. Bittleston there was very special and particular grounds for not giving costs, therefore the claim must be dismissed with costs.

(True Copy.)

(True Copy.)

(Signed) JOHN MILLER,
Acting Government Solicitor.

No. 16.

ORDER THEREON, 6th November 1862, No. 449.

Ordered that a copy of the foregoing letter and its enclosure be forwarded to the Right Honorable the Secretary of State for India, with the Despatch under transmission to that authority, submitting a copy of the Advocate General's Report of the result of the claim referred to.

(Signed) A. J. ARBUTHNOT,

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

Exd. T. McMootry.

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Order thereon. 6th November 1862 N 449

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to that Authority submitting a copy
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[Faint signature and initials]

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