

Revenue (1897) Department.

CONFIDENTIAL.

MISCELLANEOUS SERIES.

G.O., No. 4771 A

Confidential 972 A

Dated 10 September 1897

(Note) The Despatch to the Secretary of State is also
stitched with this.

[Despatch Abstract.]

Ordering that a telegram be despatched, to
the Right Honble the Secretary of State for India inquiring
the necessity to retain Sir Edward Clarke to
take immediate steps to obtain a review of the
Despatch Order for printing only those records
bearing on question of law decided by the
High Court in the Littleton case

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
His	3792	Rev.	22 July 1897				
His	3791	Rev.	22 July 1897				

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
His	4880	Rev.	16 September 97				

0
18 4,000-19-7-97.

Revenue (1897) Department.

CURRENT No. 7795

Telegram
From

The Court of Wards

Order

No.

Dated 7th Sept. 1897.

Received

Registered

Enclosures

Spare copies.

SUBJECT.

Requesting to wire
to the Secy. of State to retain
Sir Edward Clarke as
Counsel for the Pottapures
Appeal Case.

9/9

BACK PAPERS.

G.O.	No.	Department.	Date.
Mr.	3792	Rev	22-7-97

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Confidential

Code Class *25* INDIAN  TELEGRAPHS. Monthly Number. *724*

To *Kotacamund* (Office) From *Madras Revenue*

Words. *100.8* Day. *7* Hour. *10* Minute. *20* Official Instructions. *10*

To *Madras Revenue* (Person) From *Madras Revenue*



G.O. 3792 Revenue
 22 July last privy council has passed ex parte order for printing only those records bearing on question of law decided by high court. Counsel have advised absolute necessity in interests of wards case to retain Mr Edward Clarke who knows case so that steps may be taken forthwith to obtain review of ex parte order please wire Secretary at once.

Recd. from *LN.* Sent to *LN.*

At *7* Hrs. *9* Mts. by *97*

OOTACAMUND 7 9 97

Telegraph Master.

order of the Privy Council in re l. printing of the records of the Tilly Privy Council appeal.

BACK PAPERS.

Confidential

INDIAN  TELEGRAPHS. Monthly Number.

Code Class.

To

From

(Office)

Words.

Day.

Hour.

Minute.

Official Instructions.

To

(Person)

From

(Person)

State as above at.
courts cost-affidavits and
means of instructions will
be submitted in time for
transmission by mail of
15 instant of fresh
consent employed elaborate
instruction, requires involving
great loss of time.

64 Word Form.

F.C.2.

Recd. from

LN.

Sent to

LN.

At

Hrs.

Mts. by

At

Hrs.

Mts. by

Telegraph Master.

OOTACAMUND 7-9-97

U.S.P.—No. 572—27 11 96—40.00000

order of the Privy Council in re l.

BACK PAPERS.

Confidential

Revenue (1897) Department.

CURRENT No. *7867*

Confidential No 88.

From the Court of Wards, Madras.

Order

No. 1405 (Conf. n^o 52)

Dated 7 Sept^r 1897

Received 9 Sept^r

Registered 9th

Enclosures one.

Spare copies.

SUBJECT.

Ordering the despatch of a telegram to the Secretary to Govt. Rev. Dep^t, requesting that the Secretary of State for India be moved to engage Sir Edward Clarke to obtain a review of the recent ex parte order of the Privy Council in re printing of the records of the Titaly Privy Council appeal.

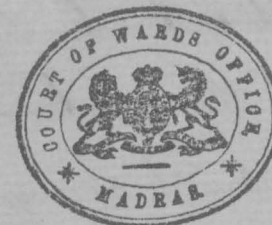
BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

CONFIDENTIAL.



Proceedings of the Court of Wards,

Dated 27th August 1897.

No. 1365 Sm

Const. No. 50

Read the following letter from Mr. P. Subramonea
Nijar Awargal, dated 26th August 1897.

In continuation of my two previous letters on the subject I beg to inform you that the Plaintiff, as I anticipated, moved the Privy Council ex parte for an order that only the records bearing upon the question of Law decided by the High Court, should be printed and submitted to the Registrar of the Privy Council. I understand that the Privy Council has passed orders in the terms of the Plaintiff's prayer. I am sending you enclosed copies of the petitions and the affidavits filed by the Plaintiff, which I have received from my London Correspondent. Plaintiff's Solicitor here received information of this by wire and the Registrar of the High Court has been informed of this. The formal order of the Privy Council is expected by the next mail.

If, when the Plaintiff made the motion, we had our Solicitor we could have instructed him to oppose or to take time to get instructions from India. As it is the order has been obtained ex parte and unless it is

is set aside, we cannot get any of the records printed beyond what is indicated by the Plaintiff and by us, directly bearing on the question of Law. The matter however does not admit of any delay as I understand the Registrar of the High Court in anticipation of the receipt of the orders of the Privy Council, has issued orders to translate only such documents as the Plaintiff's Solicitor here indicated before. I also understand that the Registrar will soon send a requisition to us to state the documents we want and it is not likely that he would allow us any very great time to send in our list.

I do not know what the Court of Wards want us to do under the circumstances. It appears to us that the Government should be addressed urgently to give sanction to employ a Solicitor and suitable counsel to move the Privy Council urgently to set aside the ex parte order. This will have to be done without loss of time. This matter should not be made to wait till the question now before Government is disposed of.

Resolution

Mr. P. Subramonea Iyer is requested to forward to the Court of Wards, (after consulting the Hon: V. Bhashyam Aiyangar) a memorandum showing the grounds on which an application to set aside the ex parte order of the Privy Council can be based. On receipt of this memorandum, the Court of Wards will request

the local Government to move the Secretary of State for India to arrange for the application being made.

True Copy & Extract
Signed / R. C. C. Carr
Secretary

To

Mr. P. Subramonea Iyer.
(True Copy)

Rece
Secretary.

Copy to B.

CONFIDENTIAL.

1895.
Court of Wards,
MADRAS.

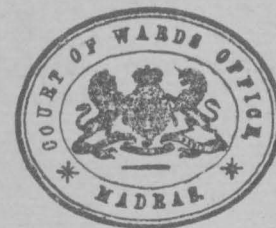
To

True Copy of Court's
Proceedings, dated 27 August 1895.
No. 1365 Misc
Conf. No. 50.

Abstract.

encl. to Rev. C. No. 7867
of 1897

CONFIDENTIAL.



Proceedings of the Court of Wards,

Dated 7th September 1897.

No. 1405 Misc
Conf. No. 52.

READ the following letter from Mr. P. Subramoneya
Iyer, Attorney-at-Law, dated 6th September 1897.
Re: Puttapur Privy Council Appeal.

Since my last, I have received an official Memorandum from the Registrar, High Court, requiring us to state within a week what further papers we consider material as bearing on the issues disposed of in the High Court besides those noted by Plaintiff, to be included in the Record for the Privy Council. I send the memo received for your perusal and return. Subsequently a reminder has been received to expedite the reply. Evidently the plaintiff's vakil's want to hurry on matters, so that they may be in a position to say to the Privy Council that their order has been complied with and that the appeal may be proceeded with without any delay and that it is too late for them to review their former order.

After giving the subject the best consideration

consideration, Mr. Bhashyam Aiyangar considers that the present matter should be treated independently and as a distinct proceeding from the appeal without any necessity for referring the matter to the Secretary of State for India. It may be in your recollection that when the original suit was pending before the District Court, the Court of Wards retained Mr. Tasker in England to represent us before the Commissioner appointed to examine witnesses on both sides. Mr. Tasker engaged the services of counsel and conducted the examination. Similarly now the present application may be viewed as a separate proceeding. If the Court of Wards concur in this view, I request immediate instructions may be given for necessary action being taken. The Government may be requested by wire to permit the Court of Wards taking immediate action as otherwise there would be delay and the plaintiff might in the meantime get the records transmitted to the Privy Council. That would complicate matters and perhaps operate prejudicially when our application to set aside their ex parte order comes to be heard; the order of the Privy Council has now been filed in the High Court by the Plaintiff; and we think it extremely desirable that instructions to file a petition on our behalf should go by the next mail
viz.

viz. on Wednesday. It is needless to point out the obvious advantage in our being able to retain the services of a Solicitor and Counsel who have been already in touch with the facts of the case; and seeing that the Plaintiff is represented by Mr. Mayne, who has been advising the Plaintiff from the very beginning, we shall be at considerable disadvantage if we now, as far as the present motion is concerned, engage a fresh solicitor and a fresh counsel. Sir Edward Clarke appeared for us in the examination of our witnesses, and he has full knowledge of the facts of the case. If he is retained now, very little in the way of fresh instructions would be necessary. Otherwise elaborate instructions setting forth the salient features of the case in the different aspects will have to be drawn up pointing out that the case cannot be dealt with by the Privy Council even on the questions of law without considering the oral evidence on some points. For instance, considerable portion of the evidence, oral and documentary, which bears

bears directly on the status of the 2nd Defendant
as the son of the Rajah has a very material
bearing on the question as to whether the
minor is not entitled to the benefit
of the will even if he was not the son.
Then again considerable portion of the
evidence ~~oral and documentary~~ ^{documentary and oral} bearing
on the question of alleged various attempts
made by the minor's mother to introduce
a supposititious child and the Rajah's
alleged complicity therein have a very
material bearing in the application of
the doctrine of Persona Designata to the
case. All these and many other points
will have to be pressed before the Privy
Council and a fresh counsel will have to
be instructed fully on all these points,
before he can be expected to do justice
to the intended motion. Mr. Mayne will
always try to pose his superior knowledge
before the Privy Council; and unless the
counsel whom we may retain is fully
equipped, there is always the danger
of Mr. Mayne getting an undue advantage.

Under these circumstances, Mr.

Bhashyam

Bhashyam Aiyangar considers that it would be
an undoubted advantage to get Sir Edward
Clarke to appear on the motion which ought
to be made without any delay whatever.
In such a case there would be no necessity
to prepare any lengthy memorandum. All
that would be necessary then would be to
send an affidavit traversing some of the
allegations made by the Plaintiff and setting
out our contention that in the interest of justice
and to prevent an unnecessary prolongation
of the litigation, the Plaintiff's suggestion
ought not to be acceded to. The Plaintiff's
object seems to be to prevent the Privy
Council going into the facts first hand.
Should they disagree with ^{the view of} the High Court
on the question of law. He seems to think
that in the event of a remand, should
the High Court concur with ^{the view of} the District
Judge, we shall not be in a position to
appeal to the Privy Council as then there
would be concurrent judgments of two Courts. The
Plaintiff and his advisers are mistaken in
this:

this: very important questions of law have been raised in the case for the first time — question as to whether evidence is admissible under section 112 of the Evidence Act to prove that the Rajah was impotent and sterile: and the Privy Council will have to adjudicate upon that point. If the Privy Council agree that under the Indian Evidence Act such evidence is not admissible, then the whole of the medical evidence and the evidence of the experts will have to be wiped out of the case. So that in any view an appeal to the Privy Council is inevitable whatever may be the finding of the High Court. This view will have to be pressed before the Privy Council: and it must be put to them whether in the event of their disagreeing with the view of the High Court they do not consider it will be better conducive to the ends of justice and lead to a final termination of the litigation much earlier and more consonant with their practice, to have the records before them in a form which will enable them to deal with the case when

when once the parties are before them. Then there is the question of costs also.

We have no doubt that the Privy Council will re-consider their order if prompt steps are taken to have the matter re-opened.

I am getting the draft of a petition ready and the preparation of a memo as directed in Court's Proceedings No. 1365 of the 26th ultimo is deferred pending the receipt of your reply to this letter.

Resolution

The following telegram will be despatched to the Secretary to Government, Revenue Department.

" G.O. 3792 Revenue 22nd July last.

Privy Council has passed ex parte order for printing only those records bearing on question of law decided by High Court. Counsel here advise in absolute necessity in interests of ward's case to retain Sir Edward Clarke who knows case so that steps may be taken forthwith to obtain review of ex parte order. Please wire Secretary of State as above at Court's cost. Affidavit and memo of instructions will be submitted in

in time for transmission by Mail of 15th
instant. If fresh counsel employed elaborate
instructions required involving great loss
of time."

(True Copy & extract)

Reel
Secretary

To the Secretary to Govt., Revenue Department with
copy of ¹³⁶⁵
27/8/1897

Confidential

Revenue (1897) Department.

CURRENT No.

7868

Confidential No 89.

From the Court of Wards, Madras

Order



No. 1406 Misc.

Conf. No. 53 of 97.

Dated 7 Sept. 1897.

Received 9th

Registered 9th

Enclosures - -

Spare copies.

SUBJECT.

Requesting counsel to furnish
the Court with certain papers to
enable it to take action in the
matter of the review of the ex
parte order of the Privy Council
relating to the printing of the
records of the Pittapur appeal.

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

CONFIDENTIAL.



Proceedings of the Court of Wards,

Dated 7th Sept^r

1897.

No. 1406 Misc
Confl. No. 53

Read again Court's Proceedings, N^o 1405 Dated the
7th instant.

Resolution

Under present orders, it is not competent to the Court of Wards or to the Local Government to instruct counsel in England direct. The Court of Wards has accordingly requested the Local Government to telegraph to the Secretary of State for India to engage Sir Edward Clarke in order to obtain a review of the ex parte order of the Privy Council.

2. The Court desires to be furnished with the following papers before the 10th instant so that they may be ready for transmission by the Local Government to the Secretary of State for India by the Mail of the 15th instant from Ootacamund.

(1) A short memo of instructions for the guidance of Sir Edward Clarke in applying for a review of the ex parte order of

of the Privy Council.

(2) Affidavits to be filed in support of the application for review.

3. To provide for the contingency of the Secretary of State declining to engage Sir Edward Clarke, a full memo giving all the details required to enable any other counsel to deal with the matter should also be forwarded as soon as possible.

4. Counsel are requested to take the necessary action on the notice received from the Registrar, High Court, Madras.
(True Extract)

Recd
Secretary

To Mr. P. Subramoneya Iyer Awaral with enclosures
(to be ret'd with reply)
To the Secretary to Government, Revenue Department
(for information)

The Hon Mr. Grose C.D.E.

In G.O. No 3792
C.D. 1954

22.7.97

JG
10/9/97

Despt 10/9/97
Portm sent to memo
on the 11/9/97

a/c
9/9/97

Read C. No 7795, 7867 & 7868

90.

Ordered that the following telegram be despatched to the Right Hon. the Secretary of State for India:—

Please see our ~~the~~ Revenue despatch No 9 dated 26th July last. Privy Council has passed ex parte order for printing only those records bearing on question of law decided by High Court. Counsel here ^{consider} ~~advise~~ ^{absolutely necessary} ~~absolute necessity~~ in the interest of wards' case to retain Sir Edward Clarke who knows case, ~~to take immediate steps that steps may be taken forthwith~~ to obtain review of ex parte order. Affidavit and memo of instructions will ^{follow} ~~be submitted~~ by next mail.

JG
10/9/97

Note. The despatch to the Secretary of State will be drafted & kept ready pending receipt of affidavit & memo of instructions from the Court of wards.

JG
10/9/97

Telegram to the Secretary of State
for India

"Please⁽¹⁾ see our Revenue Despatch No
9 dated 26th July last ⁽²⁾ Prinylomai⁽⁴⁾
has passed ex parte order for
printing only those records bearing
on question of law decided by
the Court of Inducature in Madras⁽⁵⁾
Council here consider absolutely⁽⁶⁾
necessary in the interest of Ward⁽⁷⁾
case to retain Sir Edward Clarke
who knows case to take immediate⁽⁸⁾
steps to obtain review of ex parte
order. Affidavit and memo of
instructions will follow⁽⁹⁾
by next mail.⁽¹⁰⁾

W. G. W.
10/9/97.

- (1) Pigendum.
- (2) Meracior.
- (3) Invado.
- (4) Mustelam.
- (5) Edacitas.
- (6) Lanifera.
- (7) Aggestio.
- (8) Exedimus.
- (9) Pathicum.
- (10) Dioscule.

*Not copy sent
11/9/97*

*Ed. G.
10/9/97*

Sept 15/97

18/3
15-9-97

TO

The Rt. Hon. the Secretary of State
for India.

My Lord,

The Hon. Mr. Grose C.J.E.
H.E. the Governor

13/9/97

15.9.97

Page 2

In continuation of our despatch No. 9 dated the 26th July 1897, we have the honour to inform your Lordship that the Privy Council has passed ex parte an order for printing only those records bearing on question of law decided by the High Court. We consider it absolutely necessary in the interests of the minor that this order should be set aside and that steps to this end should be taken without loss of time.

2. The first thing ^{which is necessary} ~~to do~~ is to engage proper counsel. Our reasons for recommending the employment of Sir Edward Clarke to conduct the appeal before the Privy Council have already been set forth in para 4 of our despatch No. 8 dated 24th July 1897. Those reasons now induce us to repeat the same recommendation in respect also of the application to be made for the review of the order referred to above. If ^{Sir} ~~he~~ Edward Clarke is retained now, very little in the way of fresh instructions will be necessary. Otherwise elaborate instructions setting forth the salient features of the case in ^{its} ~~the~~ different aspects will have to be drawn up ^{with a view to its being pointed out} ~~pointing out~~ that the case cannot be dealt with by the Privy Council even on the questions of law without considering the oral evidence on some points. Mr. Mayne is engaged on the other side and unless the Counsel

to be retained on behalf of the minor is fully posted up in the details of the case, ^{the latter's} ~~the minor's~~ interests ^{must} ~~are bound to~~ suffer. We have accordingly sent you ^{your} ~~the~~ enclosed telegram and request ^{that} ~~that~~ Sir Edward Clarke may be engaged and instructed to apply without delay for review of the order of the Privy Council above referred to. A memo of instructions for the guidance of Sir Edward Clarke in making the application and affidavits to be filed in support thereof are herein enclosed.

3. Our reasons for holding that the whole of the records connected with the case should be printed and not only those bearing upon the question of law decided by the High Court are as follows:-

The Plaintiff's object in having applied for an order directing that only the principal papers in the appeal should be printed seems to be to prevent the Privy Council going into the facts first hand, should they disagree with the view of the High Court on the question of law. He appears to be under the impression that in the event of a remand, should the High Court concur with the view of the District Judge, the Court of Wards as the guardian of the defendant will not be in a position to appeal to the Privy Council as then there would be concurrent judgments of two Courts. Plaintiff and his advisers are mistaken as to this. A very important question of law has been raised in the case for the first time, the question as to whether evidence is admissible under section 112 of the Evidence Act to prove

intestine and sterile,

If these are not received even by Monday's mail, a note to the effect that they will follow will be made.

To provide for the contingency of your Lordship declining to engage Sir Edward Clarke, a full memo giving all the details required to enable any other counsel to deal with the matter is also forwarded herewith.

for the case use

and the Privy Council will have to adjudicate upon it. If the Privy Council agree that under the Evidence Act such evidence is not admissible, then the whole of the medical evidence and the evidence of the experts will have to be eliminated from the records of the case, so that in any view an appeal to the Privy Council is inevitable whatever may be the finding of the High Court. This view will have to be pressed before the Privy Council, and it must be put to them whether, in the event of their disagreeing with the view of the High Court, they do not consider it will ~~be better to~~ ^{be} ~~lead~~ to the ends of justice, and lead to a final termination of the litigation much earlier and more consonant with their practice, to have the records before them in a form which will enable them to deal with the case when once the parties are before them. Then there is the question of costs also.

12/19/87

When given for copying _____
When copied _____
When examined _____
When signed _____

189 .

READ AGAIN G.O., No.
189 ,

DATED

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BEING MEANT FOR DISPATCH
IN ORIGINAL.

N.B.—

- A = Copy in full.
- B = Not to be copied.
- P = Copy abstract only.
- Q = Copy heading only.