

ACT No. XXX OF 1858.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA.

*(Received the assent of the Governor General on the 24th August 1858.)*

*An Act to provide for the administration of the Estate and for the payment of the debts of the late Nabob of the Carnatic.*

WHEREAS by Act I of 1844 it is enacted that no writ or process shall at any time be sued forth or prosecuted against the person, goods, or property of His Highness the Nabob of the Carnatic, or of such other person as therein mentioned, unless such writ or process shall be so sued forth with the consent of the Governor in Council of Fort Saint George first had and obtained as therein mentioned; and that any writ or process which shall at any time be sued out or prosecuted against the person or goods or property of His Highness or of any such person without such consent, shall be utterly null and void: and whereas the Nabob died leaving debts and liabilities to a large amount unsatisfied, some of which were contracted by himself and some by Azeem Jah Bahadoor as Nabob Regent or Naib-i-Mooktar during the infancy of the late Nabob: and whereas it is doubtful whether the creditors of the Nabob have, without the consent of the Governor in Council of Fort Saint George, any remedy for enforcing their claims against the goods or property which belonged to the said Nabob at the time of his death; and especially whether any part of the property left by the said late Nabob, which was of the nature of State or Public property, is liable for the payment of such claims: and whereas the

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East India Company is willing to give up any right which it has to any part of such property which is in the nature of State or Public property, and to allow the whole property, moveable and immoveable of whatever kind, left by the late Nabob, after appropriating to the payment of his debts such portion thereof as is liable to the payment thereof, to be applied towards making provision for the family and dependents of the late Nabob : and whereas the said East India Company is also willing to pay in full, to such of the creditors as shall be willing to accept the same, in the manner herein mentioned, all such debts as shall be proved to have been fairly and justly contracted by the said Nabob or on his behalf during his infancy by the said Azeem Jah as Nabob Regent, such debts to be estimated in respect of moneys at the amounts which may be proved to have been actually advanced or paid by such creditors respectively, and in respect of goods supplied or other matters at the amount which shall be proved to have been the fair and actual value thereof at the time when such debts were incurred, together with interest on such debts at a rate not exceeding six per centum per annum, the property of the said Nabob being applied in the first instance for that purpose, but any deficiency therein being made good by the said East India Company : and whereas the said Nabob is alleged to have mortgaged and created divers liens and securities upon certain portions of his property, of which or some of which the validity and extent of operation, especially as against the creditors of the said Nabob, is doubtful, and it may also be doubtful whether the same can be enforced in any of the ordinary Courts of Justice; and it is expedient that provision should be made for giving effect to the said mortgages, liens, and securities so far as the same shall have been created *bonâ fide* and for valuable consideration, and for affording a simple mode of ascertaining the rights of the parties claiming under such mortgages, liens, and securities: and whereas it is also alleged that various conveyances, deeds, and instruments have been executed by the late Nabob without valuable consideration in favor of persons who have under color thereof executed or created mortgages or assignments of, or securities or liens on the property comprised therein : and whereas it is expedient that provision should be made for investigating all such claims, and for protecting the *bonâ fide* creditors of the said Nabob from the effect of any conveyances executed by the Nabob under such circumstances as rendered them void as against such creditors, and for affording a simple mode of ascertaining the rights of the parties claiming in respect

pect thereof as well as of parties claiming to be creditors of the Nabob: It is enacted as follows :—

I. The Governor in Council of Fort Saint George shall, immediately after the passing of this Act, appoint such person as he may think fit to act under the orders of the Supreme Court of Judicature at Madras in the administration of the property of whatever nature left by the said late Nabob. The person so appointed shall be designated "The Receiver of the Carnatic property," and shall have power to collect and take possession of all such property, and shall hold the same according to the provisions of this Act; and shall give such security (if any) as the said Governor in Council may require.

Appointment of person, designated Receiver of Carnatic property, to administer the estate.

II. The said Receiver shall be entitled to receive such commission, not exceeding five per centum upon the amount or value of the property collected by and distributed under the provisions of this Act, as the said Governor in Council shall appoint, which commission shall be charged to the estate.

Remuneration of Receiver.

III. The Governor in Council shall have full power to suspend or remove any person appointed such Receiver as aforesaid, and also from time to time to fill up any vacancy in such office which may be occasioned by death, retirement, suspension, or removal.

Suspension, removal, &c., of Receiver.

IV. Such Receiver shall represent the estate of the said late Nabob in all proceedings relating thereto under this Act or otherwise, and shall do and perform all acts in performance of his duties or office under his official designation, and in all proceedings whether at law or in equity he shall be so styled and designated; and no proceedings in which the Receiver may be a party shall abate by reason of the death, retirement, suspension, or removal from office of any such Receiver, but the same shall be continued and carried on by his successor as if no such death, resignation, suspension, or removal had occurred.

Receiver to represent the estate in all proceedings.

V. The

V. The Receiver shall have full power to collect, take possession of, and get in all property, moveable or immoveable and whether of the nature of State or Public property or not, 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; and, if necessary, to sue for and recover the same as representing the said estate of the said Nabob under this Act, and to realize by sale or otherwise the value of the said property: and he shall proceed to collect and take possession of the same with all convenient speed immediately after the passing of this Act.

Receiver to collect, sue for, and take possession of the property.

VI. Whenever the Receiver, by the order or with the sanction of the Court, shall sell any immoveable property to which the Nabob was entitled either at law or in equity at the time of his death, or which is liable either at law or in equity to satisfy the debts of the said late Nabob, he shall execute a conveyance thereof to the purchaser; and such conveyance shall be valid and effectual and give a good title as against the heirs of the said Nabob, and all persons claiming under them, and also as against all persons claiming under the said Nabob by virtue of any conveyance or instrument declared by the said Court to be void as against the creditors of the said Nabob, or by virtue of any mortgage or security, the benefit of which has been barred under the provisions of this Act.

Receiver selling immoveable property with the sanction of the Court, may execute conveyance thereof to purchaser.

Effect of such conveyance.

VII. Upon a suit being instituted as hereinafter mentioned, the said Receiver shall be deemed subject to the orders of the said Court, and so far as such orders shall not extend, to the general practice of the said Court in the same manner as any other Receiver specially appointed by the said Court, except that he shall not be called upon by the said Court to give security.

Upon a suit being instituted under this Act, Receiver to be subject to the orders of the Court.

VIII. 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 VI of 1854, upon a summons to be served upon the said Receiver,

Suit for administration of estate.

Special directions to be given as to creditors holding mortgages or other securities.

Receiver, an order for the administration of the estate and effects of the said Nabob ; and such order, in addition to the ordinary directions contained in the usual order for the administration of the moveable and immoveable estate of a deceased Mahomedan, shall direct that all creditors who may hold any mortgage or security upon any part of the property mentioned in Section V of this Act shall come in and prove their claims and establish their securities and the consideration for the same, or in default thereof that they shall be barred and excluded from all benefit of their said securities ; and the said Court shall also by the said order give such directions as to the notices to be issued to such creditors and otherwise, and shall direct such enquiries, as to the Court shall seem fit.

IX. Upon such order being made, the Court shall take an account of all debts and liabilities which were due from the said Nabob at the time of his death, and also of all property, moveable or immoveable and whether of the nature of State or Public property or not, 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 ; and shall also determine whether any and which of the said creditors had any and what mortgage or security upon any and what portion of the property of the said Nabob, and for any and what consideration or amount, and whether such mortgage or security constituted a valid charge upon the whole or any and what portion of the property included therein.

X. Every creditor of the said Nabob, who shall not come in and establish his claim under and according to the said order, shall be barred from all benefit of the said claim ; and all persons who may hold or claim under any mortgage or security as aforesaid, who shall fail to come in and establish the same and (if required by the Court so to do) to prove the consideration for the same under and according to such order, shall be barred from all benefit of such mortgage or security ; and the said Court may order the property affected thereby to be delivered up to the said Receiver.

XI. In

XI. In case it shall appear to the satisfaction of the Court that there is good reason to believe that any conveyance or other instrument executed by the said late Nabob in his lifetime was executed under circumstances which rendered the same void as against creditors, the said Court may, at any time pending the suit, order the person or persons claiming under such conveyance or instrument to come in and establish his claim under the same ; and in default of compliance with the said order, the said Court may declare the said conveyance or instrument to be void as against the creditors of the said Nabob, and may order the property thereby conveyed to be delivered up to the said Receiver.

Court may order a person claiming under a conveyance executed by the Nabob under circumstances rendering the same void as against creditors, to come in and establish his claim.

XII. In case it shall appear to the satisfaction of the Court that there is good reason to believe that any property was conveyed by the said Nabob in his lifetime to any person or persons in order that he or they might raise money thereon for the use of the said Nabob, the said Court may declare that, subject to any mortgages or securities which may have been *bonâ fide* created thereon, the said property is part of the estate of the said Nabob and shall be administered accordingly, and may also order all persons who may hold or claim under any mortgage or security executed by the person or persons to whom the said property was so conveyed by the said Nabob to come in and prove their claims and establish their securities and the consideration for the same, or in default thereof that they shall be barred and excluded from all benefit of their said securities ; and the said Court shall also by the said order give such directions as to the notices to be issued to such creditors and otherwise, and shall direct such enquiries as to the Court shall seem fit ; and all persons who may hold or claim under any mortgage or security executed by or on behalf of the person or persons to whom such property was conveyed as aforesaid, who shall fail to come in and establish the same and (if required by the Court so to do) to prove the consideration for the same under and according to such order, shall be barred from all benefit of such mortgage or security ; and the said Court may order the property affected thereby to be delivered up to the said Receiver.

Property conveyed by the Nabob for the purpose of raising money for his use, may be declared part of his estate subject to *bonâ fide* mortgages created thereon.

Mortgagees, &c. of such property to come in and establish their mortgages.

Notices to be issued.

Persons holding under such mortgages, who fail to come in and establish their claims, shall be barred from all benefit thereof.

XIII. No

ACT No. XXX OF 1858.

XIII. No action or suit shall be commenced or prosecuted by any creditor of the said Nabob against any person as the representative of the said Nabob, otherwise than in accordance with the provisions of this Act; and all actions and suits, which at the time of the commencement of this suit shall be pending at the suit of any such creditor against any person as representative of the said Nabob, shall abate; the costs of such suit, if the said Court shall consider it reasonable, to be paid out of the assets of the said late Nabob.

No suit to be instituted against any representative of the Nabob otherwise than in accordance with this Act.

Pending suits to abate.

XIV. Any person claiming to be a creditor of the said late Nabob, who within the period of three months from the passing of this Act shall file in the Office of the Registrar of the said Supreme Court a written declaration stating that he is 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 or to be a charge upon such property and to remain unpaid (the amount to be estimated in respect of moneys at the amount which shall be proved to have been actually advanced to or paid for the use of the said Nabob, and in respect of goods supplied or other matters at the amount which shall be proved to have been the fair and actual value thereof at the time when such debts were incurred) together with such interest (if any) not exceeding the rate of six per centum per annum as shall be awarded by the said Court; and that he is willing to give up any mortgage or security which he may hold upon any part of such property as aforesaid, or which shall have been charged with the said debt—shall be entitled, upon giving up such mortgage or security to the said Receiver, to have the amount of his claim ascertained by the said Court in manner hereinafter mentioned.

Special application by creditor for immediate investigation of his claim by the Court.

XV. When any sum of money shall have been paid by the said Nabob in his lifetime in specific discharge of interest at a higher rate than six per centum per annum, such payment shall not be re-opened or questioned; but interest at the reduced

Payments made by the Nabob in discharge of interest not to be questioned.

From what period interest at the rate of 6 per cent. shall be calculated.

duced rate of six per centum per annum (as by this Act provided) shall be calculated from the period up to which interest shall have been specifically discharged by any such payment by the said Nabob.

XVI. 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 XIV in respect of a part only of his claims upon the said late Nabob or upon any such property as aforesaid.

Creditor not entitled to make special application in respect of a part only of his claims.

XVII. No assignment of any such claim as aforesaid upon the said late Nabob or upon 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 or be deemed to be valid or effectual if made or executed subsequently to the date of the passing of this Act, or if made or executed since the death of the said late Nabob, unless proved to have been made *bonâ fide* and for a valuable consideration, the proof whereof shall lie upon the person claiming under such assignment.

No assignment of such claims to be valid, if made after passing of this Act, or since the Nabob's death, unless made *bonâ fide* and for valuable consideration.

XVIII. Every person claiming to be a creditor of the said late Nabob in respect of any security commonly called and known as an Istufa Cutcherry Bond issued by order of the said late Nabob in discharge of or connected with the debts of Moomtauzool Moolk Bahadoor otherwise called Ghoolam Moortaza Khan Bahadoor, shall be deemed a creditor of the Nabob within the meaning of Section XIV of this Act.

Persons claiming in respect of Istufa Cutcherry Bonds to be deemed creditors of the Nabob within the meaning of Section XIV of this Act.

Court, upon application, to fix a day for the investigation, and to give notice thereof to the Company's Solicitor at Madras.

XIX. The said Court, upon the application of such creditor, shall appoint a day for ascertaining the amount of his debt, and notice of the day so appointed shall forthwith be given by the applicant to the Solicitor of the

the East India Company at Madras. The day so appointed shall not be less than twenty-one days from the time of the application.

XX. At the time of giving such notice, the creditor shall also furnish to the said Solicitor full particulars of his claim. If the particulars so furnished are insufficient, the said Court or a Judge thereof may make an order for further particulars. In case any such order be made, the Court shall not proceed to investigate the claim until fourteen days from the time when sufficient particulars have been furnished, and if necessary shall appoint a further day for the hearing.

Particulars of claim to be furnished to the Solicitor.

Government may, seven clear days before hearing, give notice of consent to an order for payment.

XXI. At any time not less than seven days before the hearing, the Government may give notice to the claimant that it is willing to consent to an order for the payment of an amount to be specified in the notice in full discharge of what is justly and fairly due.

XXII. Upon the day so fixed or upon any other day to which the Court may think fit to postpone the investigation, the Court, after proof of the service of the notice required by Section XIX of this Act, shall proceed to ascertain and determine in a summary way what amount is justly and fairly due from the estate of the said Nabob at the time of his death to the claimant, whether the debt be payable by instalments or not and whether or not the day or days fixed for the payment thereof shall have arrived. In ascertaining such amount, the said Court shall not allow to any person claiming to be a creditor, in respect of money lent or advanced, any larger sum than the amount which shall be proved to have been actually advanced to or for the said late Nabob, or, in the case of such Istufa Cutcherry Bonds as aforesaid to or for the said Ghoolam Moortaza Khan Bahadoor, together with simple interest thereon not exceeding the rate of six per centum per annum (to be calculated up to the date of the order for payment), notwithstanding any higher rate of interest may have been agreed to be paid; and shall not allow to any person claiming to be a creditor, in respect of

Claim to be summarily investigated by Court.

Amount due how to be ascertained—

in respect of money lent—

in respect of goods supplied, &c.

of

of goods supplied or of any other matters, any larger sum than the amount which shall be proved to have been the fair and actual value thereof at the time when such debt was incurred by or on behalf of the said late Nabob, or, in the case of such Istufa Cutcherry Bonds as aforesaid by or on behalf of the said Ghoolam Moortaza Khan Bahadoor, without reference to the price or sum which may have been agreed to be paid for or in respect thereof, together with simple interest thereon not exceeding the rate aforesaid, if the Court shall consider that the claimant is entitled to recover interest.

Court to order payment of amount so ascertained, with costs.

Proviso.

The said Court shall issue an order for the payment of the amount so ascertained to be due, together with the costs of proving the debt if it shall think fit to award costs. Provided that, if the amount so ascertained to be due shall not exceed the amount specified in the notice (if any) given under Section XXI, the Court shall not award costs to the claimant.

XXIII. For the issue of subpœnas or other process, for preparing orders of payment, or for any other business connected with the Court, of ascertaining the amount of any debt or claim under the last preceding Section, the Officers of the said Court shall be entitled to charge the like fees as would be chargeable in an ordinary suit in the said Court for such debt or claim for business of a like nature, or such other fees as the Court with the sanction of the Governor in Council shall appoint in that behalf.

Upon every investigation, East India Company may appear by Counsel.

Claimant may appear in person, or by Counsel, or by Attorney, &c.

Agent.

XXIV. Upon every investigation under Section XXII of this Act, the East India Company may appear and be heard by Counsel; and the claimant may appear in person or by Counsel or, if the Court shall think fit to allow the same, by Attorney or any other

XXV. The amount ascertained by the Court to be due to the claimant upon the investigation under Section XXII, together with such interest and costs (if any) as shall be awarded by the Court, shall be paid to the claimant by the said Receiver

Amount found due with interest and costs how to be paid.

ACT No. XXX OF 1858.

Receiver within ten days after a copy of the order of the said Court shall have been served upon him. In case no sufficient assets belonging to the estate of the said late Nabob shall be in the hands of the Receiver to enable him to pay such amount, the same shall be forthwith paid out of the Public Treasury of the East India Company, and the said Company shall be entitled to be re-paid by the Receiver out of any assets which may afterwards come to his hands. The judgment of the Court as to the amount due to such creditor as aforesaid for principal and interest shall, in taking an account of the debts and liabilities and of the estate and effects of the said Nabob in such administration suit as aforesaid, be treated as *primâ facie* evidence that a debt to that amount was due

Adjudication of amount to be *primâ facie* evidence, of the debt in the administration suit.

to such creditor.

XXVI. If it shall appear that the amount paid out of the assets of the said Nabob to any such creditor or to the East India Company under the provisions of the last preceding Section, exceeds the amount which such creditor, independently of the provisions of this Act, would have been entitled to receive out of the assets of the estate, the difference

Provision if payment be made to a creditor under the preceding Section in respect of the amount receivable by him.

between the amount so paid and the amount which would have been so receivable shall be made good by the East India Company, and shall be paid to the Receiver for the benefit of the persons interested in the estate.

XXVII. No action or suit shall be brought against the East India Company or any person for any thing done under the provisions of this Act, or for or by reason of any act, reasonable or proper, for the protection of any property, moveable or immoveable and whether of the nature of State or Public property or not, to which the said

No action in respect of certain things done under this Act, or before the passing thereof if done with the sanction of Government.

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, or for realizing the assets thereof, which may have been done before the passing of this Act by any person under the orders or with the sanction of the said Governor in Council.

XXVIII. No

XXVIII. No property shall be taken by the said Receiver out of the possession of any person mentioned in the list last published in the Government Gazette at Madras of persons entitled to privileges under the provisions of Act I of 1844, without the previous order of the said Governor in Council.

No property to be taken by the Receiver out of possession of privileged persons without the order of Government.