Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Richardson and others, Executors of Ghoolam Moortoozah, v. *the Government, representing the Estate of the Nawab of the Carnatic; delivered 9th July,* 1863.

Present:

LORD KINGSDOWN.
LORD JUSTICE KNIGHT BRUCE.
LORD JUSTICE TURNER.

SIR LAWRENCE PEEL.
SIR JAMES W. COLVILE.

THIS case stood over after the Appellant's Counsel had been heard, in order that their Lordships might have an opportunity of examining the evidence on which the questions raised by the Appeal depend. They have accordingly done so, and having considered it carefully and fully weighed the arguments advanced on the part of the Appellant, in the course of which everything that can be found in the record favourable to his case was well connected and arranged, they have come to the conclusion that the Appeal cannot be supported.

It is brought against an Order of the Supreme Court of Madras disallowing some, whilst it allowed other, items of a claim preferred by Ghoolam Moortoozah Khan Bahadoor, the deceased Appellant, under the Act passed in 1858 by the then Legislative Council of India, for the administration of the estate and for the payment of the debts of the last Nabob of the Carnatic.

The claim was made under the 14th Section of

the Act (No. XXX of 1858.) By that and the subsequent Sections it is provided that any person claiming to be a creditor of the late Nabob, who shall file a declaration stating that he is willing to receive in full discharge of all his claims against the Nabob or his estate, such amount as the Supreme Court shall award under the provisions of the Act, shall be entitled to have his claim investigated in a summary way, and to receive the amount awarded out of the assets of the late Nabob, in the hands of the Receiver appointed under this Act, if these shall be sufficient for the purpose; and if they shall be insufficient, out of the Public Treasury. The Court, however, in the exercise of this summary jurisdiction, is (by the 22nd Section) forbidden to allow to any claimant, in respect to money lent or advanced, any larger sum than the amount which shall be proved to have been actually advanced to or for the late Nabob, with simple interest thereon, not exceeding the rate of six per centum per annum; or to any claimant, in respect 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 the debt was incurred, with simple interest, not exceeding the rate aforesaid, if the Court shall consider the claimant entitled to interest. It would seem, therefore, that the Act not only limits the extraordinary remedy, which it gives, to certain defined classes of debt; but throws upon the claimant more than the ordinary burden of proof, compelling the holder of any written acknowledgment or security to prove the actual consideration for it; and those claiming the price of goods delivered, to prove the fair and actual value of them.

The late Appellant, who was a kinsman of the Nabob, and was always on terms of intimacy with him, appears to have been an extravagant, and, for many years, a needy person. In 1843 he took the step, most unusual, as we understand, for a person of his rank, of passing through the Insolvent Court. In 1851, on the occasion of making a final settlement with his creditors, he was assisted by the issue, by the Nabob, of some securities, known as the Istafa Cutcherry Bonds, to the extent of seven lacs of rupees. These bonds were handed over to creditors of the late Appellant; they have been since

paid, and are not now in question. It is said on the part of the Appellant that they were given in part discharge of a large debt due from the Nabob, but that this payment left other demands still unsatisfied, which are the subject of the present proceedings.

The principal item now in controversy is founded upon moneys said to have been placed by the mother of the late Appellant in the hands of the mother of the Nabob, three lacs by way of loan, two lacs by way of deposit in trust for the late Appellant.

For these sums it is not pretended that the Nabob was originally liable, but it is stated that he received them from his mother, and thereby became liable for them, and acknowledged his liability. The debt of seven lacs of rupees was said also to have consisted mainly of moneys advanced in the same way by the mother of the Nabob, and secured by his promissory note.

The story told on behalf of the late Appellant seems to their Lordships to be full of the grossest improbabilities. It is highly improbable that his mother, who appears to have been in the receipt of a small pension only, should have had the means of advancing, as she is alleged to have done, no less than ten lacs of rupees to the mother of the Nabob, especially within the short period within which these sums are alleged to have been advanced. It is equally improbable that these advances, if in fact made by the late Appellant's mother, should have been made, as they are alleged to have been, without his knowledge. If these sums were really due it is scarcely to be credited that the claim for them should not have been prosecuted in 1848, when the account was sent in to the Istafa Cutcherry,—an account, it is to be observed, in which written documents not now produced are referred to as vouchers for some of the items. Again, it is most improbable that the grandmother of the Nabob should have deposited two lacs of rupees with the Nabob's mother as a provision for the late Appellant, and that no communication should for several years have been made to him upon the subject. Yet there is no trustworthy evidence to explain any of these improbabilities, or to support the ingenious theories suggested at the Bar. The promissory note for seven lacs

of rupees, part of these alleged advances, is not given to the lady who is said to have made the advances, but to Arathoon, who appears to have been engaged in other pecuniary transactions with the Nabob. No reliance can, in their Lordships' judgment, be placed on the letters alleged to have been written by or by the direction of the Nabob admitting the late Appellant's claims, or upon the extracts alleged to have been made from the Nabob's accounts. The letter of the 26th April, 1848, in their Lordships' opinion, bears upon the face of it palpable marks of having been concocted for the mere purpose of sustaining the late Appellant's claims, and cannot be relied upon to support them, and if this document be fabricated, the fabrication is all but fatal to the Appellant's case. Beyond this it is plain upon the evidence that the Istafa Cutcherry disputed the late Appellant's claims. He was called upon for accounts and particulars. He rendered none, and did not prosecute his claim in the lifetime of the Nabob. Moreover, the evidence shows that the late Appellant for some time at least acted as agent for the Nabob, and was in receipt of moneys on his account, and there is no proof of these moneys having been fully accounted for by him. Their Lordships are satisfied that the Court below was quite right in holding that no sufficient evidence had been offered in support of this charge.

Nor have they been able to satisfy themselves that any of the smaller items which have been disallowed on the second part of the claim ought to have been allowed. It is unnecessary to consider whether some of the items disallowed, if satisfactorily proved, would have constituted debts recoverable under the 14th section of the Act, because their Lordships think that they are not proved. It is not the course of this Committee to disturb the finding of the Courts below upon mere issues of fact, unless it is clearly satisfied that there has been some miscarriage, either in the reception or in the appreciation of evidence. In cases that turn upon the credibility of the testimony given, it is disposed to defer to the judgment of those who, with the advantage of local experience, have had the means of seeing witnesses under examination, and of inspecting the original documents. Their Lordships also feel that in the exercise of this statutory and

peculiar jurisdiction the Court below was almost bound to insist on the utmost strictness of proof. For it needs but little knowledge of human nature, as it exists in India, to see that a scheme involving the payment out of the public Treasury of the debts of a native Prince, who seems to have lived and died in a state of chronic insolvency, was calculated to bring forth a host of claimants not likely to be very scrupulous, either in the statement of their demands, or in the manufacture of evidence to support them. And it is obvious that the Government which has thus undertaken to pay the debts of the Nabob must be without many of the means which an ordinary representative of a deceased person would have of resisting claims, either wholly false or dishonestly swollen.

Upon the whole case their Lordships are unable to see any sufficient ground for disturbing the Judgment of the Court below, and they must, therefore, humbly recommend to Her Majesty that this Appeal be dismissed with costs.