

EAST INDIA (NAWAB OF SURAT).

RETURN to an Order of the Honourable The House of Commons,
dated 16 March 1858:—*for*.

A COPY “ of any CORRESPONDENCE between Meer Jafur Ali Khan and the Court of Directors, and between the Court and the Board of Control, respecting the PROPERTY of the late NAWAB of SŪBAT (in continuation of Parliamentary Paper, No. 31, of Session 2, 1857); together with any DISSENTS recorded by Members of the Court of Directors on the subject.”

East India House, }
25 March 1858. . }

J. D. DICKINSON, Secretary.

(Sir De Lacy Evans.)

Ordered, by The House of Commons, to be Printed,
26 March 1858.

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East India House, }
25 March 1858. }

J. S. Mill,
Examiner of India Correspondence.

COPY of CORRESPONDENCE between Meer Jafur Ali Khan and the Court of Directors, and between the Court and the Board of Control, respecting the PROPERTY of the late NAWAB of SURAT (in continuation of Parliamentary Paper, No. 31, of Session 2, 1857,) together with DISSENTS recorded by Members of the Court of Directors on the subject.

Meer Jafur Ali to the Court of Directors, dated London, 7th July 1857.

Gentlemen,

IN compliance with the intimation made to me by the Right Honourable the President of the Board of Control; I have the honour to request that the distribution of the property of the late Nawab of Surat may be suspended for a year from this time, as I am in great hopes that, by personal conference at Surat with the parties interested against me, I shall be able to effect a voluntary settlement of this harassing litigation.

If I should not succeed in this endeavour of mine, I shall return to England, and prosecute my appeal to the Privy Council or to Parliament.

I have, &c.
(signed) *Jafur Ali.*

DRAFT of proposed Reply by the Court of Directors to the above, showing in *red ink* the alterations made by the Board of Control.

Sir,

I AM commanded by the Court of Directors of the East India Company to acknowledge the receipt of your letter of the 7th ultimo, and I am instructed to inform you in reply, that the Court, ~~with due consideration for the rights of~~

~~others, are unable to~~ ^{will} comply with your request for the suspension, for one year from the present time, of the distribution of the private property of the late Nawab of Surat.

I have, &c.
(signed) *James C. Melvill, Secretary.*

Meer Jafur Ali to the Court of Directors, dated London, 3d August 1857.

Gentlemen,

ON the 7th of July last, I had the honour to address the Honourable the Court of Directors, requesting that the division of the private estate of the late Nawab of Surat may be suspended for one year's time, in order that I may proceed to India and endeavour, by private conference, to come to an amicable settlement with the parties interested in the estate of the late Nawab; but up to this day I have not had the honour of any reply.

I beg to remind the Honourable Court that my further stay in this country would only involve me in further expense, and my great desire is to start immediately for India, and there with my utmost exertion to render any service which might be required of me by the Government, and thereby have an opportunity to prove my loyalty and attachment to the British rule, as was always shown by my late father-in-law and his ancestors, as also shown by my father before me, especially in 1817, under Sir John Malcolm, in the pursuit and subsequent surrender of the ex-Peishwa, Bujee Row, of the Deccan. The Government records will show the subject in its fullest details.

I have, &c.
(signed) *Jafur Ali.*

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PAPERS RELATING TO THE PROPERTY OF

From the Secretary at the East India House to the Secretary at the Board of Control, dated East India House, 20 August 1857.

Sir,

WITH reference to the alterations made by the Board of Commissioners for the Affairs of India, in the draft of a letter to Meer Jafur Ali Khan; I am commanded by the Court of Directors of the East India Company to observe that, whilst these alterations entirely reverse the decision of the Court, the Board have furnished no reasons for the same.

2. I am commanded further to observe that the distribution of the private property of the late Nuwab of Surat, under the decree of a court of competent jurisdiction, has already been suspended for nearly five years; and that they have reason to believe that many of the members of the family are, consequently, in distressed circumstances. The Court, therefore, entertain the strongest conviction that they cannot, without great injustice to these persons, consent to any further delay, at the request of Meer Jafur Ali; whose apparent object in making that request is to enable himself to return to India, and there to induce the other members of the family to waive in his favour a portion of their just rights, as decreed to them by a competent authority.

3. For these reasons, the Court earnestly deprecate the alterations of the Board, and request that they may be permitted to revert to the decision contained in the original draft of their letter.

I have, &c.

(signed) *James C. Melvill*, Secretary.

From the Secretary at the India Board to the Secretary at the East India House, dated 25 August 1857.

Sir,

I AM desired by the Commissioners for the Affairs of India to acknowledge the receipt of your letter of the 20th instant, conveying the representation of the Court of Directors of the East India Company against the alteration made by the Board, in the letter which the Court propose to address to Meer Jafur Ali Khan, as to the distribution of the property of the late Nawab of Surat.

The Board regret that the reason for making the alteration was not communicated to the Court on the 7th instant: but it is simply this; the Board do not see that injury will be done to any individual interested in the property, if the distribution, which has already been postponed for a long time, be delayed for a short time longer; and therefore they are not unwilling to grant the request made by Meer Jafur Ali.

I am, &c.

(signed) *G. Clerk*.

From the Secretary at the East India House to Meer Jafur Ali Khan Behaudur, dated 27 August 1857.

Sir,

I AM commanded by the Court of Directors of the East India Company to acknowledge the receipt of your letter of the 7th ultimo; and I am instructed to inform you in reply, that the Court will comply with your request for the suspension for one year from the present time of the distribution of the private property of the late Nawab of Surat.

I have, &c.

(signed) *J. C. Melvill*, Secretary.

DISSENT by Mr. *Willoughby*, concurred in by Mr. *Smith* and Mr. *Astell*.
SURAT CASE.

I DISSENT from the reply to Meer Jafur Ali, as amended in a Committee of the whole Court, and passed on the 29th ultimo, by nine to six, for the following reasons :

1st. Because, although no case within my experience, both before and after its introduction into Parliament, has been so fully and carefully considered, and, as far as words can express finality, finally decided, the Court's present resolution is opposed to its previous decision, repeatedly and deliberately confirmed, first in 1844, again in 1848, again in 1850, and finally in 1854.

2d. Because it is at variance with the proceedings of the Court so recent as the 23d June last, when, after having rejected a compromise proposed by the Chairman by 14 to 2, it passed the following resolution :—

“The Court having felt it to be their duty to oppose upon principle the Private Bill before the House of Commons, must decline to be parties to the compromise now submitted, more especially as it is palpably for the benefit of Jafur Ali and his immediate family, to the exclusion of other claimants, who have had no opportunity of being heard by the Committee appointed by the House of Commons, and whose rights as heirs general have been judicially recognised in India.”

3d. Because, also, it is at variance with the Court's proceedings of the 9th July last, when, after having rejected another compromise proposed by the Chairman, it came to the resolution, “that it is inexpedient to initiate further proceedings in this matter.”

4th. Because it is inconsistent with the Court's Petition to the House of Lords, which caused the rejection in that assembly of the Private Bill passed by the House of Commons.

5th. Because, since the Court still maintain, that under the treaty of 1800 the family possess no right, either in law or in equity ; because, in fact, Jafur Ali is now informed, “all right to the stipend described in the treaty ceased on the death of the late Nuwab,” this Court has no right, on the plea of liberality towards parties who possess neither ancestral or personal claims for such liberality, to impose a burthen on the resources, or rather on the tax-payers of India. By so doing, it appears to me that the Court is abandoning its duty as trustees of the Crown, and as protectors of the people of India.

6th. Because the assertion contained in the letter, that the grant of one lack of rupees per annum to Jafur Ali and his daughters, together with a bonus of 20,000*l.* sterling as a free gift, are to be “regarded only in the light of an increased exercise of the liberality already shown to him and his family, and in nowise as an abandonment of the position which the Court have hitherto maintained,” will be believed by no one, even had not the Court in the same paragraph acknowledged that the present concessions are made “in deference to the opinions and feelings which have been expressed in other quarters.”

7th. Because by thus yielding, not from conviction, not from any distrust or misgiving respecting the justice or equity of its previous decisions, but from external pressure, the Court is abdicating its proper functions, and will afford an opportunity to its opponents to declare, that the Court, abandoning its own conscientious convictions, has been willing to purchase relief from further agitation of the Surat case, at the cost of principle.

8th. Because, although in the 3d para. it is stated “the Court will not object to devote prospectively the whole of the stipend of *Rs.* 150,000 per annum to a life provision for the family and dependants of the late Nuwab,” the pensions which have now been allotted, in the aggregate actually exceed the amount specified in the treaty of 1800 ; a prodigality not to be justified at any time, but more especially in the present state of the finances of India.

9th. Because, notwithstanding the Court's profuse liberality, there is no assurance that the concessions offered will be accepted as final. On the contrary, it was expressly stated, during the discussion, that there could be no assurance, even as regards Jafur Ali himself, but that at all events it must be obvious that he was not competent to bind his daughters ! I certainly heard this declaration with surprise, it being universally admitted that Jafur Ali can claim nothing except on behalf of his daughters.

10th. Because, admitting, for the sake of argument, that as far as relates to Jafur Ali and his daughters, the settlement is final, it cannot bind the collateral relations of the late Nuwab. Those who are influenced in agreeing to the settlement, by the opinion of the Select Committee of the House of Commons, and the Private Bill founded thereon, will scarcely dispute this, for that opinion was not pronounced in favour of Jafur Ali and his daughters, but in favour of the heirs of the late Nuwab, if any there be within the true intent and meaning of the treaty. Neither will this, I think, be disputed by those who are influenced by the term "warisan" or heirs, being found in the 4th article of the treaty; for, unquestionably, those who contend that the stipend should be treated as private property, as an inheritance, must admit that "warisan" includes collaterals. Hence, therefore, it will probably happen that after the Court has allotted the entire stipend in the manner now proposed, the collaterals, founding their claim on the Private Bill, and on the construction placed by some on the 4th article of the treaty, will claim their portion of the inheritance as a matter of right. This portion, being six sixteenths of the whole, will amount to Rs. 56,250 per annum, and the claim on the above construction can scarcely be resisted.

11th. Because, whether it can be resisted or not, any compromise founded on the proceedings in Parliament will reflect discredit on this Court, if collaterals are excluded. This Court has already recorded a formal resolution to this effect, and the reasons why it would be so were very forcibly stated in his seat in Parliament by a member of this Court.*

12th. Because it is unworthy of, and will reflect discredit on this Court, to abandon its own conscientious views of what is right, and to recede from the resolution recorded almost with one assent on the 23d June last, merely in deference "to the opinions and feelings which have been expressed in other quarters," when the arts and devices which have been resorted to, as will always be the case whenever it is desired to enlist the sympathy of party and Parliament in any particular cause, are matter of common notoriety. There can be no doubt, that by the dissemination of ex-parte statements through the press and in pamphlets; by the aid of able professional advocates; by the employment of parliamentary agents; by a personal canvass of Members of Parliament, and in other influential quarters; by the distribution, it is even rumoured, of valuable presents; and, lastly, by the unlucky accident, that whereas the evidence of the promoters of the Private Bill was presented to the House on the 9th June, that produced against it was not presented until the 18th or 19th, only four or five days before it passed the "third reading;" a feeling of sympathy has been created in favour of Jafur Ali and against the Company, which is not due to the intrinsic merits of the case.

13th. Because the compromise, as it is termed, will be construed into admission by the Court, that its proceedings will not stand the test of further scrutiny. In considering this question, I cannot altogether keep out of view the merits of the case, although it is impossible to discuss them at length and in detail, within the period allowed for recording a dissent. Proofs, however, upon proofs, have accumulated during this discussion, of the correctness of Lord Ellenborough, the Governor-General of India's opinion,† that "with the title and office of Nuwab expires all claim to the money which the British Government engaged to pay annually by the treaty of 1800. That money was evidently to be paid as the clear surplus of the State Revenue, after defraying all charges. It was to be paid to the Nuwab as such. It was, and it remained under the treaty, public property. It was not made private property, to be severed from the State when its head might fail."

For instance, the diary kept by Mr. Duncan during the negotiation of the treaty, is relied upon to prove that the stipend of 15,000*l.* was intended to descend to heirs, independent of the succession, and not as the authorities in India and this Court contend, that the stipend was annexed to the office of Nuwab, and could only, therefore, descend to the heirs and successors of the Nuwab. The treaty is dated the 13th May 1800, and the Court's construction of

* See Debates on the Surat Treaty Bill, June 11th, 14th, and 24th, 1850, published by J. H. Taylor, p. 102.

† See Mr. Secretary Thomson's letter, dated the 9th September 1842, Minutes of Evidence on the Nuwab of Surat Treaty Bill, p. 66.

of what was intended, is confirmed by a minute of later date, both to the Diary and the treaty of Mr. Duncan's (namely, the 25th July 1800),* in which, when reviewing his proceedings for the information of his superiors, he expressly states: "By the proposed treaty all the powers of the native government were to be vested in the Company, and the future nabobs to receive a fixed stipend of a lac of rupees per annum, and one-fifth more of the surplus net revenue."

By the last mail, moreover, the Court received a copy of the treaty in Persian, which, in the opinion of better Oriental scholars than myself, strongly supports the correctness of the Court's construction of that document. In fact, had this version of the treaty been produced before the Select Committee of the House of Commons, they would, I think, have paused before they reported to the House that the stipend must be regarded as private property, as an inheritance descendible to heirs like ordinary goods and chattels. I have been favoured by Mr. Prinsep with his remarks on the Persian version of the treaty, and its true construction, and with his permission append it to this paper. The promise recorded in Mr. Duncan's diary, correctly interpreted, is quite consistent with the treaty, the preamble of which, embracing every article, states it is entered into with the Nuwab and his heirs and representatives, or, as Colonel Ouseley renders it, with "the sitters in the place," or those "who sit in the place of the Nuwab." But, besides this, in the 4th Article, which is so much relied upon by Jaffir Ali's advocates, it is expressly declared that the fifth share of surplus revenue, afterwards compounded for Rs. 50,000 per annum, "both now and in future shall be paid to the Nuwab's Government.—See Colonel Ouseley's Translation.

14. Because, although very sensible of the evil consequences likely to arise if questions like the present, involving the construction of treaties entered into many years ago in India, are to be transferred from the duly constituted authorities to the judicial tribunals of this country, I am persuaded that, in the present instance, the result would not be adverse to the Company. If, for instance, the case were referred to the Privy Council, that tribunal would no doubt give due weight to the strong facts which can be adduced against the supposition that the stipend was to descend to heirs general. Such, for instance, as the fact, that on the death of Meer Nusseer-ood-deen, in September 1821, it did not so descend; no one dreamt of preferring such a claim. So, also, the fact that had it been deemed expedient, on the death of the late Nuwab, to continue the office of Nuwab, the entire stipend would have passed to whoever had been selected as his successor. The Privy Council, moreover, in considering the word "heirs," as used in the treaty, would, it may be presumed, construe it with reference to the Mahomedan law, and not be unmindful of the necessary caution of the celebrated Sir William Jones,† who, in the preface to his translation of the "Al-Sirajeyyah, or the Mahomedan Law of Inheritance," writes: "I must request English readers to dismiss from their minds those appropriated senses in which many of our words, as heir, inheritance, root, and the like, are used in our systems. I was under the necessity of retaining the Arabian phraseology, both in law and arithmetic."

But whatever might be the result of a reference to the Privy Council, I feel confident that it could not be so detrimental to the credit of this Court as this compromise will be, for I concur in a remark made during the discussion of the case, that ten adverse decisions of a court of justice would not be so injurious to the Court's character for justice and consistency.

In the event, moreover, of the Court being forced by further proceedings in Parliament into a court of law, I feel the strongest conviction that, however much others might be benefited, Jafur Ali and his daughters would not only take nothing, but would lose the handsome provision which has been assigned to them. Reserve now would be misplaced. In such an event the matter must be judged by the strict rules and principles of courts of justice, and hence the question, which has never yet been fairly raised, of the legitimacy of the party through

* See Minutes of Evidence taken before the Select Committee on the Nuwab of Surat Treaty Bill, p. 13.

† See his Works, vol. 3, cited by Mr. Leith, professor of law at Haileybury, in his remarks on the construction of the Surat Treaty, dated 25th April 1856.

through whom Jafur Ali claims, must and will be raised. The Select Committee of the House of Commons have expressly stated* that it is their intention, and that it is only right and proper that it should be investigated. It is only owing to the false delicacy of the Bombay Government, in originally waiving this question out of consideration to the Nawab's family, that an opportunity has been afforded to attack with plausibility the Court's decisions in this matter. Now, however, as was formerly remarked† by Sir George Clerk, when he filled the high office of Governor of Bombay, "In the discussion of the late Nuwab's affairs, the question of the legitimacy of the daughter through whom the memorialist (Jafur Ali) claims was very properly though generously waived. The case, however, now assumes a different aspect when the memorialist appears in the character of an aggrieved person. The Honourable Court should, therefore, I am of opinion, be referred to the 65th to 85th paragraphs of the Honourable Sir G. Arthur's elaborate Minute, dated the 28th April 1843, on the demise of the late Nuwab, in which the point is slightly touched upon, and more particularly to Sir G. Arthur's Minute, dated the 19th March 1844, in the 3d and 5th paragraphs of which the question of her legitimacy was specially touched upon. On the supposition that the daughters who were married to the sons of Meer Surafraz Ali were legitimate, the connexion thus formed would have been regarded as far below the Nuwab's rank and family, since the Meer, I am told, is of no family or note whatever, having been the architect of his own fortune; and I am told by the Political Secretary that this want of respectable ancestry frustrated the Meer's endeavours to obtain for his two sons, wives from a family at Baroda, which, though of high rank, is, in point of wealth, far inferior to that of the late Nawab of Surat. The memorialist, therefore, speculated in matrimony, and, notwithstanding his present complaint, may be considered fortunate. I am of opinion that he has been most liberally dealt with, and that the settlements made by the late Government ought not to be disturbed.‡

When this question is investigated, I can scarcely entertain any doubt but that the result will be adverse to the promoters of the Bill in Parliament. For the evidence in regard to the origin and birth of Ameer-ool-Nissa, the mother of Bukteyar-ool-Nissa, the wife of Jafur Ali, and daughter of the late Nuwab, does not depend upon any interested party, but was obtained from her own lips by Mr. Elliot, the Governor's agent, as follows: After having given some particulars derived from less trustworthy sources, Mr. Elliot reports: "With her sanction I repaired to the Palace, and with every deference demanded by her retired habits and peculiar circumstances, I obtained from her own lips the following history of her early life:

"She belonged to the Rajpoot caste, and resided at Bhownuggur. When about the age of 12 or 13 a stranger came there and purchased her, for what sum she knows not. He conveyed her to the town of Randier, and afterwards to the residence of the old Nuwab, father of his late Excellency. The latter informed his mother that a young girl had been brought to the Palace, whom he wished to live with him. His proposals having been acceded to by his parents, she was given into his keeping. She recollects having heard that the person who brought her, in consideration of the purchase received 200 rupees and a pair of shawls. Three children were the offspring of this connexion, of whom one alone, Bukteyar-ool-Nissa survives (that is, Jafur Ali's wife). After the Bismillar of this child, four years, four months, and four days subsequent to its birth, she was married to the Nuwab, who passed to her a deed of emancipation."

It is unnecessary to continue the quotation relating to her emancipation and marriage to the Nuwab, for it is contended, and, I believe, rightly so, that Ameer-ool-Nissa being of Hindu lineage, could not in the first instance have become

* See Minutes of Evidence before the Committee, p. 94.

† Minute dated September 1847.

‡ With reference to this Minute of Sir G. Clerk's, I would also refer to the following Minute which I recorded on the occasion:—"I entirely concur in the view which our Honourable President has taken of this case; and with reference to para. 9, I can corroborate the facts there stated, and may further state, that when Meer Surafraz Ali married his sons to the daughters of the late Nuwab of Surat, the more than doubtful origin of their mother was alleged as the cause of his having succeeded in forming a connexion, otherwise so much above his own fortune and pretensions."

become the Nuwab's legal slave, and could not therefore have subsequently become his lawful wife. On this point, *see* Macnaghten's Mohammedan Law, p. 58 and 67.

But, supposing for the sake of argument, this difficulty is surmounted, another of a still more formidable nature remains. Admitting that by any process or ceremony, Ameer-ool-Nissa, the concubine, could have become the late Nuwab's lawful wife, would this have the effect of legitimatising a child, born four years and four months previously, and entitle such child to take the whole or a portion of the Nuwab's estate? There can, I believe, be no doubt that any court of law must decide these questions in the negative, and consequently adversely towards Buktehar-ool-Nissa, the wife of Jaffir Ali.* I have not time to discuss this point further, but will restrict myself to one other quotation.

“By the Mahommedan law they only are slaves who are captured in an infidel country in time of war, or who are descendants of such captives. It is not pretended that Ameer-ool-Nissa was either the one or the other of these, and therefore she was not a legal slave, and her offspring previous to her marriage was spurious. So, also, if she be of Mohammedan descent, her marriage with the Nuwab would not legitimatise the children she had borne to him as his concubine. Tried by this test, Buktehar-ool-Nissa was unquestionably illegitimate.”

But the point at issue does not even rest here. Admitting, again, for the sake of argument, the validity of the marriage, and that the effect of such marriage was to legitimatise the children born some years previously in concubinage, the daughters of Jafur Ali not being according to the Mohammedan law among the heirs of Meer Nusseer-ood-deen, the Nuwab of Surat, with whom the treaty was entered into, could only claim the amount or the proportion of the stipend to which their mother was entitled during her lifetime. The Select Committee of the House of Commons did not consider themselves called upon to pronounce an opinion on this or any of the other points of Mahommedan law involved in the question. It was, however, very ably argued by the Company's counsel, and was uncontroverted by the opposite side. It is also the opinion of the learned Professor of Law at Haileybury (J. F. Leith, esq.), who was for many years a leading and distinguished member of the bar at Calcutta. He states: “Her two daughters, on whose behalf the claim is now made by their father, Meer Jaffir Ali, are not heirs of Meer Nusseer-ood-deen; they do not belong to his family or to that of the late Nuwab his son, but to the family of their own father, by Mohammedan law. For by that law, both Meer Nusseer-ood-deen and Meer Afgul-ood-deen would be termed their false grandfather, that is, an ancestor into whose line a female is interposed.”—*See* Al-Sirageyyah, or the Mahommedan Law of Inheritance. Sir William Jones' Works, vol. iii.

15th. Because, on neither side, male or female, is the party benefited by this compromise entitled by ancestral or personal claims to the further liberality of the British Government. They are not the descendants of royalty or of nobility; they are not the representatives of any of the ancient families of princes and chiefs to be met with in every part of India. The Nuwabs of Surat were originally merely the local executive officers of the kings of Delhi. Their office was not hereditary, but required confirmation on every demise. They were liable to removal, and in later times the succession was sometimes forcibly contested by different candidates. Their subordinate capacity is strongly marked by their being the Wakayanavees,† or “recorders of the public courts of Surat, for the use of the court of Delhi,” the emoluments of which office the late Nuwab enjoyed up to the day of his death. As the power of the crown of Delhi diminished, that of the British Government increased, and it was only by the influence of that power that the Nuwabs were maintained, and the territory entrusted to them preserved from the grasp of the Mahrattas, for Surat itself was twice pillaged by the celebrated Sivajee. So matters continued until 1800, when the treaty entered into in 1759 with Meeah Atchund personally

* Letter from Mr. Hobbert, agent to the Governor at Surat, dated the 8th March 1854.

† *See* Jaffir Ali's Memorial to the Government of India, dated 14th April 1848, paras. 93 to 96.

personally was converted by Lord Wellesley, on conditions of his Lordship's own dictation, into an hereditary treaty, the advantages of which were to descend in the male line to the heirs and successors of Meer Nusseer-ood-deen for ever. This was in one sense a very great boon conferred on the Nawab.

With the view of enlisting public sympathy and support on his behalf, the titles of "Nabob of Surat," "Rajah of Surat," have frequently been conferred on Jafar Ali by those who support his cause. I would speak of him with respect. I have known him almost from his infancy, and although I have never disguised from him, in his repeated interviews with me on the subject of his claims, I could not conscientiously support them, I never entertained other than friendly feelings towards him. When, however, I first went to Baroda, now I regret to state close upon 40 years ago, his father, Meer Surafraz Ali, was merely the follower and dependant of Meer Kumal-ood-deen Khan, an officer of high rank, and commonly called the Nawab of Baroda. Meer Surafraz Ali, and his fathers before him, served the Nawabs as Silladars (*Anglice* troopers, horse soldiers who provide their own horses and arms.) In that capacity he served with the Guicowar Contingent in Malwa in 1817-18, under the late Mr. Williams, and attracting his attention by his good conduct, this gentleman, when he afterwards became Resident at the Guicowar's court, befriended and advanced his interests. Shrewd, intelligent, and clever, amidst the intrigues which always prevail at a Mahratta Durbar, and for which Baroda has always been conspicuous, he gradually raised himself to wealth and power, first becoming a commander of horse, and afterwards a farmer and manager of districts. He is now, I believe, manager of the Guicowar's possessions in Kattywar. The fortunate marriage of his two sons to the daughters of the late Nawab of Surat completed his good fortunes. The following account of the family, furnished to me by Major Wallace, one of the ablest political officers now employed in Guzerat, confirms the above statement :

"Meer Surafraz Ali is the son of Meer Muntaz Ali of Sheshwan in Hindoostan, and I believe both father and son entered as Silladars into the service of Nawab Meer Kumal-ood-deen, one of the principal officers in the Guicowar service. The father does not appear to have ever occupied any conspicuous situation, but the son accompanied Meer Kumal-ood-deen, when the latter led a contingent into Malwa with Mr. Williams in 1817. Serafraz Ali was promoted for his good conduct on this occasion, and on the return of the expedition he married Kumal-ood-deen's sister-in-law, and received a separate employment in the Guicowar's service. He was dismissed from this situation in 1838, and went to Surat to celebrate his daughter's marriage. After two years, his eldest son Akber Ali was confirmed in his father's old appointment. Meer Serafraz Ali's family history, so far as he is connected with Guzerat, opens therefore with his father coming down from Hindoostan, and entering the service of Nuwab Kumal-ood-deen as a Silladar."

To his credit, as observed by Sir G. Clerk, Meer Surafraz Ali was "the architect of his own fortunes." But there can be no doubt that he was greatly indebted for his first rise at Baroda to Mr. Williams, and afterwards to the countenance and favour of the late Sir John Malcolm, and Sir James Carnac, when Governors of Bombay. In fact, on one occasion he fell into disgrace with his master Seeagee Row Guicowar, who dismissed him from his service, and deprived him of all his estates and honours. These, however, were afterwards all restored to him through the intervention of the British Government. I wish I could add that he at all times evinced gratitude for the favours bestowed upon him, but truth compels me to add, that in the difficult attempt to serve two masters he failed, and subjected himself to the following rebuke from the Political Commissioner in Guzerat :

"I could have had nothing to say to Meer Surafraz Ali, had he given honest and sound advice to Seeagee, fitting the time, but he acted as an intriguer of the worst description: a traitor to his prince, in offering dangerous advice, and evincing deep ingratitude to the British Government, through whose means only a few short months ago, and in the course of these demands, he had been restored to his honours, his estates and his property, of which he had been dispossessed by Seeagee for six years. I confess my mind is filled with concern at having to state these circumstances of a man whom I esteemed, and whom I never saw but in a most respectable light in his adversity. I am now informed that he is a dangerous intriguer, always promoting his own selfish purposes."

This extract is taken from a letter addressed to L. R. Reid, Esq., Secretary to the Government of Bombay, by the late James Sutherland, Esq., Political Commissioner and Resident at Baroda, and dated the 2d June 1840.

16th. Because, in my opinion, the compromise will only temporarily avert the evils against which it is avowedly made. Those who have extorted it will pursue the same tactics whenever it suits their pleasure, and circumstances seem propitious. Similar demands will, I fear, be made on the Court's liberality, whenever the desire of a victory in the House of Commons, or any other sufficiently stimulating cause exists. I have always understood that one of the chief public advantages derived from this Court is, that it acts as a breakwater against the undue influences which have been set in motion in this matter, and to which I hesitate not to express my belief that Jaffir Ali is mainly indebted for the success of his operations.

17th. Because I doubt the power of the Court to grant to Jaffir Ali, or any other person, "in free gift the sum of two lacs or 20,000 *l.* sterling," without first referring the grant for the confirmation of two General Courts of Proprietors, which, in a political matter of this kind, I should not consider desirable.

18th. Because I object to Jaffir Ali being informed that the proposed arrangement must be considered "a final settlement of the question of the claims of himself and family;" 1st, because, in like manner, he has on at least four or five occasions been informed that the Court's previous decisions were final; and, 2dly, because, as I have already shown, the proposed settlement cannot effect or bind collaterals. To these objections I may add, that when, as in the present case, there is no mutual understanding, the offer of compromises is hazardous. For very frequently they are accepted only as an instalment, and are afterwards cited as an admission so far of the right of the contending party. It would not be difficult to show that this has actually occurred during the discussion of the present case.

19th. And lastly, because it appears to me, that by yielding to the Parliamentary pressure which has been brought to bear on this case, we are holding out a premium to future agitation, and an encouragement to parties in India who are wealthy to repair to England in the hope, by agitation and by the performance of *khutput*,* to obtain a reversal of decisions passed by the most competent authorities in India, even although they may have, after a careful consideration, been confirmed by the duly constituted authorities in this country. I conceive that nothing can be more detrimental to the interests of British India than a system like this, because of its impairing and weakening effect upon the authority of those to whom the administration of that vast empire is entrusted.

I have not time to refer to the question of the private property of the late Nuwab, nor is this necessary, since the Court has declined to become a party to reopening that question. One of the first requests preferred by Jaffir Ali to this Court on his first visit to England,† was, that the "disputes of the Begum and her dependents be referred for adjustment as usual to the Government agent, and not to the civil court, the interference of the latter in the concerns of the family never having as yet taken place, and being likely to be considered derogatory." To Act XVIII. of 1848 afterwards passed, and under which the estate has been administered, he was not only a consenting but a soliciting party; and not only this, but he actually supplied a clause in the Act so amended as to subserve what he then considered to be for his advantage. It is little more than declamation in an exceptional case of this kind, to assert that this Act interfered with Jaffir Ali's rights and privileges as a British subject. In the first place, it would be difficult to establish that he is a British subject. He was bred and born at Baroda, and consequently, I presume, he is a Guicowar subject. But be this as it may, in the forcible language of one of Her Majesty's ministers (Mr. Lowe),

“The

* For the signification of this term, see the Blue Book in four folio volumes, published by order of Parliament in 1854.

† See Letter to the Chairman of the Court of Directors, dated the 22d August 1844, produced by himself before the Select Committee, p. 68 of Minutes of Evidence.

"The case was this; the Nuwab died possessed of a considerable amount of personal property, which was taken possession of by the East India Company, and by an Act of the Legislative Council (whether wisely or not was not his business to argue) the Government of Bombay made a distribution of that estate, and the distribution so made was as final and conclusive as a decision of the House of Lords would be in this country. The Government of Bombay gave half the property to the present claimant, Meer Jaffir Ali, and distributed the other half among the widows and collateral relatives of the Nuwab. The money had not been paid to those parties, and the Committee now by this Bill have re-opened the question after those persons had acquired an indefeasible right, and to let in Meer Jaffir Ali to appeal, and set up a claim before the Privy Council to the other half. He did not think it would be to the credit of that House to take away the allowance from those poor relatives of the Nuwab."

So also in the debate in the House of Lords, his Grace the Duke of Argyle observed:

"He should mention also, that when the private property of the late Nuwab was to be divided, Sir R. Arbuthnot decided that the present claimant was not entitled to any portion of it. Nay, more, this very man was a consenting party to that arrangement. A special Act was passed authorising an agent to act in the distribution of the property, and in it was a clause, suggested by the present claimant, going directly against the present application. Only two years since he appealed to the Privy Council, and the decision was given by Sir Knight Bruce, to the effect that no appeal lay in the case."

On all the above grounds I am reluctantly compelled to record this dissent. In consenting to this compromise the Court will, I fear, obtain credit from no party; but by showing that it is willing to purchase relief from further agitation by a considerable sacrifice of the public revenues entrusted to its charge, it will afford a great triumph to its opponents, and a severe disappointment to its well-wishers.

East India House,
12 November 1856.

(signed) *J. P. Willoughby.*

We concur generally in this dissent.

(signed) *M. T. Smith,
J. H. Astell.*

MEMORANDUM by Mr. Prinsep.

If the question pending between the son-in-law of the late Nuwab of Surat and the East India Company, in regard to the stipend enjoyed by the deceased, be referred in common with the dispute between him and the other heirs of the deceased, to the decision of Her Majesty's Privy Council, the argument on the part of the East India Company may be stated thus:

The ground for referring this part of the case, together with the private estate case, will probably be in deference to the opinion and report of the Committee of the House of Commons, which declared this stipend to be in the nature of heritable property, to which the heirs of the late Nuwab were equally entitled as to other personal and real property left by the deceased.

To the stipend being so treated, the East India Company must demur, on two separate grounds:

First, that it was a stipend assigned to the father of the deceased *qui* Nuwab, to be enjoyed by him and such heirs only as might succeed to him as Nuwabs; that it was one entire stipend claimable always by such one of the first Nuwab's heirs as might succeed him in the title and state of Nuwab, and in which no other heir but such one could have any claim to share by any right of law or custom, the whole stipend being inseparable from the title.

The proof of this lies in the fact, that the stipend was not granted by deed or sunud, in which case the grant, if made to a man and his heirs, would give to all heirs such right as by law they could claim, and the subject matter granted, whether land or stipend, would be a legal property to be claimed by suit or otherwise in any court of law; but the stipend assigned to the Nuwab Nusseer-

ood-deen was part of a settlement made by treaty, to which the Nuwab as Nuwab was party on one side, and the East India Company on the other.

It is called in Persian عهد و پیمان which Colonel Ouseley translates "Treaty and engagement" between the East India Company and its successors *جانشیران* and the Nuwab Nusseer-ood-deen Khan, his heirs and successors *وارثان و جانشیران*. This is the ordinary form of all treaties and engagements made by the Government of India with the heads of states and petty principalities. The engagement is binding as a recognition of the hereditary right of the family to succeed to the title and state so secured by treaty; but it is only made with the head of the State, and whoever succeeds to be the head, is the only party that can claim under it. This construction and rule holds in Europe as well as in Asia. Were England to bind herself to pay to the King of Sardinia, or to the Grand Duke of Tuscany, his heirs and successors, a certain stipend or fixed sum per annum, performance of the stipulation could only be claimed by the heir of the party to the engagement who might succeed to the state and title, and an heir female not entitled to succeed could make no claim to separate the stipend from the State, or to take any part of it, if not admitted to be its ruling head. Treaties dealing with State revenue, deal with it as appurtenances of State, not as private property. A grant out of revenue is quite a different thing, and, if valid, creates a property according to the law of the country of which the grantee is the subject, or otherwise, as may be specifically provided in the grant; not so a treaty as above explained.

But it will be said the words of the fourth article of the treaty, stipulating for the payment of the stipend, do not bear this construction, for although the title or preamble declares the treaty to be concluded with the Company and its successors on one side, and the Nuwab and his heirs and successors on the other, it is stipulated in the fourth article that the stipend shall be paid to the Nuwab and his heirs without mention of successors. Much stress is laid upon this difference in the terms used. The reply to this is, that no argument can be built on the omission of the word successors in this clause, unless it be maintained that in consequence of such omission, supposing Nusseer-ood-deen to have had two or more sons (as indeed he had), each one of those sons could have claimed his legal share of the stipend by right of equal inheritance, the fact of the eldest son being raised to the musnud and made Nuwab notwithstanding. No one has ever maintained or attempted to assert such a claim on their part. If so, then the engagement as a treaty with heirs and successors, and, as such, securing a succession in perpetuity to heirs, governs all the stipulations, the fourth article amongst the rest, which secures payment of the stipend to the Nuwab and his heirs, that is, such heirs as shall be Nuwabs.

That this is the natural and fair interpretation is confirmed by reference to the Persian version. There we find the words *نواب مع وارثان* Nuwab *mye warisan*, with his heirs instead of *and* his heirs, which means that the amount shall be paid always to the Nuwab for him to make provision for his heirs and dependents, each Nuwab receiving the whole, and so in case a different construction had been put on the stipulation, that is, if the government of the day had proposed to divide the stipend amongst heirs, the recognised successor as Nuwab would have argued and maintained against such a proposition. This is further confirmed by the words used in respect to the fifth* of surplus revenue stipulated by the same article, as to be paid, also, in addition to the fixed stipend of a lakh, which was made a first charge on the revenues ceded. The words are *پنجم حصه ان در این وقت و آینده در سرکار نواب صاحب رسائیده شود* which Colonel Ouseley rightly translates, "a fifth portion both now and hereafter shall be paid to the Nuwab's Government." (Sirkar.) These words show clearly the understanding of the parties to the treaty, as to the nature of the provision reserved for the Nuwab out of the revenues ceded, and as to the manner of its payment; and this is further confirmed by the minute of Jonathan Duncan, Governor of Bombay,† who negotiated and made this treaty, in the 8th paragraph of which minute it is said—"By the proposed treaty all the powers of the native Govern-
ment

* The fifth was afterwards commuted for 50,000 per annum.

† 25th July 1800.

ment were to be vested in the Company, and the future Nuwabs to receive a fixed stipend of a lac of rupees per annum, and one-fifth more of the surplus net revenue." No one ever would pretend that the fifth surplus stood on a different footing from the lakh. Both, therefore, had to be paid entire to the Nuwab of the day so long as there should be a Nuwab.

But the Diary of the Governor, Jonathan Duncan, is especially relied upon as containing an assurance that the stipend would be continued to the Nuwab's family in perpetuity. There is no doubt that Mr. Duncan did point out to the Nuwab the benefit he received from the treaty, in that it secured a perpetuity to his family in lieu of the discretionary change at each succession, which had heretofore been witnessed. But this assurance applied to the succession to the Nuwabship, with its stipend, and not, separately to the stipend, as argued: it guaranteed to the Nuwab that his successors should always be in the same position, *quâ* stipend, as well as *quâ* rank, and that no fresh treaty would be enforced lowering his successors in rank and diminishing their stipends. This is all that Governor Duncan could ever have intended or the Nuwab could ever have understood.

It may fairly be argued that the word "varis," meaning heirs general, and not being confined to male descendants, guarantees a perpetual succession to the Nuwabship, with its stipend, so long as there shall be such heirs forthcoming. This is a distinct ground, but not likely to be taken by Meer Jaffir, the son-in-law, for he personally is not a "varis," and he does not pretend that a daughter or grand-daughter is entitled to be made or declared Nuwab. The argument, if admitted, would compel the East India Company to look for a "varis" among the collaterals, for the word includes them, and raising one of them to the title and dignity, to give to him, according to the stipulations of the treaty of 1800, the entire stipend of Rs. 1,50,000 reserved out of the Surat revenue for the Nuwab so recognised and established.

The Government of India decided that the fair construction of the words of the treaty did not give collaterals a right to claim the succession to this Nuwabship, partly on the ground that no treaty or engagement of the kind has ever been considered as binding Government to heirs not descended from the founder of the family, who first obtained the title and dominion. The collaterals in this case not only are not descended from an ancestor who was Nuwab of Surat, but their ancestors had a separate position specifically assigned to them, at the same time that the first Nuwab was placed on the musnud. This separation is of itself an excluding circumstance.

On these grounds it seems to me that the right of Government to deal with the stipend as a lapse on the decease of the late Nuwab may be maintained before the Privy Council, with every prospect of success.

5 November 1856.

(signed) *H. T. Prinsep.*

(True copies.)

East India House, }
25 March 1858. }

(signed) *J. S. Mill,*
Examiner of India Correspondence.

EAST INDIA (NAWAB OF SURAT).

COPY of CORRESPONDENCE between Meer Jafur Ali Khan and the Court of Directors, and between the Court and the Board of Control, respecting the PROPERTY of the late NAWAB of SURAT (in continuation of Parliamentary Paper, No 31, of Session 2, 1857); also, Copy of DISSENT recorded by Members of the Court of Directors on the subject; &c.

(Sir De Lucy Evans.)

*Ordered, by The House of Commons, to be Printed,
20 March 1858.*
