M.R.O. 1—77,004—8-9-37.

(1) Number of pages 16

(2) Date of repair 30-11-40

(3) Initials of the Referencer [illegible]

MADRAS RECORD OFFICE.

Government of Madras.

[illegible] DEPARTMENT.

G.O. No. [illegible] Press / Mis.

Dated [illegible] 18[illegible].

Not to be folded or roughly handled

Proceedings of the Madras Government, Financial Department,
21st February 1876.

Government Savings' Bank.

Read the following :—

No. 185. From R. B. CHAPMAN, Esq., Secretary to the Government of India, Financial Department, to the Secretary to the Government of Bombay, dated Fort William, 9th February 1876, No. 753 (Accounts) :—

I am directed to acknowledge the receipt of your letter, No. 4164 (Financial), dated the 14th December 1875, forwarding an application from Messrs. Hearn, Cleveland, and Lee-Warner, Solicitors of the Bombay High Court, for sanction to the payment to their client, Mrs. Catherine Sarstedt, of certain deposits made in the Government Savings' Bank at Neemuch by her maternal grandfather, the late Ensign John Osborne, to whose estate she has taken out letters of administration.

2. In reply, I am directed to state that the Governor-General in Council is pleased to sanction the payment to Mrs. Sarstedt of two-thirds of the money standing in Ensign John Osborne's name in the Neemuch Savings' Bank at the time of his death, together with simple interest at the proper rate from that date to the date of payment, the remaining one-third being treated as having been paid to Mrs. Maria Osborne as in a due course of administration.

3. His Excellency in Council is, however, of opinion that the Directors of the Bank of Bombay should be called upon to show cause why the loss in this case should not fall upon the Bank in accordance with the terms of the contract with the Bank for the management of the public debt.

4. The point involved in the present correspondence will be communicated to all Government Savings' Banks throughout India.

Copy of the above letter and of the one to which it is a reply, with enclosures, forwarded for the purpose indicated in the last paragraph of this letter and for information and guidance as follows :—

To the several Local Governments and Administrations.

To the Comptroller-General and to the several Accountants-General and Deputy Accountants-General in independent charge.

(Signed) D. BARBOUR,
Under Secy. to Govt. of India.

From W. G. PEDDER, Esq., Acting Secretary to the Government of Bombay, to the Secretary to the Government of India, Financial Department, dated 14th December 1875, No. 4164.

I am directed by His Excellency the Governor in Council to forward, for the consideration of the Government of India, the accompanying copy of a letter from Messrs. Hearn, Cleveland, and Lee-Warner, Solicitors, High Court, dated 23rd October 1875, stating that one John Osborne had, at the time of his death, in the Government Savings' Bank at Neemuch a sum of Rupees (1,200) one thousand and two hundred, which was paid to his widow, Mrs. Maria Osborne, although she was not the duly-constituted legal representative of the deceased; intimating that Mrs. Catherine Sarstedt, granddaughter of the said John Osborne, has now attained her majority and has taken out letters of administration to the estate of John Osborne ; and requesting, under circumstances explained, that the sum of Rupees 1,200 may be restored to their client, Mrs. Sarstedt.

2. I am at the same time desired to forward the accompanying copy of a memorandum from the Deputy Secretary to the Government Savings' Bank, Bombay, dated 2nd November 1875, admitting the fact of the late John Osborne having a deposit in the Savings' Bank at the time of his death and stating that the money was paid to the Committee of Adjustment direct as required by the Regimental Debts Act of 1863, and not to the widow.

3. The point involved in the question being a legal one, the opinion of the Honorable the Advocate-General was asked as to the liability of Government in the matter. Mr. Scoble's opinion is as follows :—

"The claim made by Messrs. Hearn, Cleveland, and Lee-Warner on behalf of Mrs. Sarstedt in respect of the money standing to the credit of her grandfather John Osborne in the Government Savings' Bank at Neemuch at the time of his death is, in my opinion, a good claim.

"There is nothing to distinguish the case of the Savings' Bank from that of the Agra Bank, which was decided in favor of Mrs. Sarstedt by the High Court on appeal in August last. The fact that money was paid to the President of the Committee of Adjustment and not to the widow is, to my mind, of no importance. The payment was made on the 21st January 1869, at which time the Committee of Adjustment was *functus officio* as appears by Colonel Anderson's letter of 12th January 1869 to the Secretary of the Government Savings' Bank, Bombay. The payment was not made, as Mr. Fraser suggests, 'as required by the Act;' it was made to Colonel Anderson as agent for the widow. To use the words of Sir M. Westropp : 'If the Bank had looked into the Regimental Debts Act, they would have seen that neither the Committee of Adjustment nor the Military Secretary to Government had any right to make over these assets, exceeding, as they did, £100 in value, to the widow or next-of-kin, in such a case as the present, unless they were armed with probate or letters of administration.' As the Savings' Bank made the same mistake as the Agra Bank, they must suffer the same consequences.

"I think therefore that Government should offer to pay to Mrs. Sarstedt two-thirds of the money standing in John Osborne's name in the Neemuch Savings' Bank at the time of his death, together with simple interest at the proper rate from that date to the date of payment, treating one-third as having been paid to the widow as in a due course of administration. This was consented to in the case of the Agra Bank, and is, I think, all that Mrs. Sarstedt is equitably entitled to claim.

"I should add that I was one of Mrs. Sarstedt's counsels in her suit against the Agra Bank, and that Sir Charles Sargent decided against her claim in the first instance. These considerations may perhaps render Government desirous to obtain further advice before acting on my opinion."

4. On a careful consideration of the question, His Excellency in Council has come to the conclusion that the course advised by the Advocate-General should be followed, and I am accordingly directed to request you will be so good as to move the Government of India to accord their sanction to the payment to Mrs. Sarstedt of the sum as advised in paragraph 3 of the Honorable the Advocate-General's opinion.

5. In conclusion, His Excellency in Council desires me to suggest that the point involved in these papers should be communicated to all Government Savings' Banks throughout India with a view to prevent such a mistake being again made.

From Messrs. HEARN, CLEVELAND, AND LEE-WARNER, Solicitors, High Court, Bombay, to the Acting Secretary to Government, Bombay, dated 23rd October 1875.

Enclosed we have the honor to submit, for your perusal, copy of certain correspondence, noted in the margin, which has taken place between ourselves and the Government Savings' Bank of Neemuch relating to the wrongful payment by Government of a sum of Rupees 1,200 formerly standing to the credit of John Osborne, since deceased.

18th July 1872. Hearn, Cleveland, and Peile, to Manager, Government Savings' Bank, Neemuch.
25th September 1873. A. E. Peile, Esq., to Manager, Government Savings' Bank, Neemuch.

2. Ensign John Osborne was, at the time of his death, Assistant Commissary of Ordnance at Neemuch, and had, previously to his marriage with Mrs. Maria Osborne, been married to a former wife, who was then dead, having left issue one child, a daughter, who also died, having in her turn one child, also a daughter, named Catherine Hitchcock, who, up to the time of her marriage with William Sarstedt hereinafter mentioned, had been placed in the school at Byculla.

3. John Osborne died at Neemuch, intestate, on 11th December 1868, leaving him surviving his second wife, Maria Osborne, and his granddaughter, the said Catherine Hitchcock, as his only next-of-kin. On his death a Committee of Adjustment was formed at Neemuch as provided by the Regimental Debts Act of 1863, and Maria Osborne having paid all the preferential charges prescribed by the Act, the Committee, on the 21st of December 1868, made their report stating that the deceased had left no will, and that they had handed over the whole of his property (inventory of which was attached, including the Rupees 1,200, and stating that the Government Savings' Bank Book was then in Bombay and had been made up to January 1867 and showed this balance of Rupees 1,200) to Mrs. Maria Osborne. Mrs. Maria Osborne appears to have subsequently obtained payment of the money, though when it is uncertain, as the Government Savings' Bank of Neemuch, it will be seen, never replied to any of our letters. No letters of administration had been, or have been, since taken out by Mrs. Maria Osborne, and the payment was therefore clearly illegal.

4. The granddaughter, Catherine Hitchcock, was born on the 31st of January 1856, and up to the time of her marriage with William Sarstedt, now an Engine-driver on the East Indian Railway, on the 24th October 1871, was, as we have stated, an inmate of the school at Byculla.

5. On the 6th of June 1873 letters of administration to the estate of John Osborne were granted to Willam Sarstedt until his wife, Mrs. Sarstedt, should attain eighteen.

6. On the 31st January 1874 Mrs. Sarstedt attained her majority of eighteen years, and on the 11th of September 1874 she took out letters of administration to the estate of her grandfather, the said John Osborne.

7. Such being the material facts, we now beg to call your attention to the judgment recently given by the Appellate Court in the case of Sarstedt *versus* the Agra Bank on the 14th day of August 1875, copy of which, as printed in the *Times of India* of the 21st August 1875, we now send you. From it you will see that the Court has held that the Agra Bank was wholly unjustified in paying to Mrs. Maria Osborne any portion of the estate of John Osborne on the ground of her not being the duly-constituted legal representative. The Agra Bank have, in pursuance of the judgment, since paid to us the sum due from them with principal, interest, and costs.

8. We may here observe that legal proceedings would not have been taken against the Bank if the sum wrongfully received and misappropriated by Mrs. Maria Osborne could have been recovered from her, but she was, and still is, in a hopeless state of insolvency.

9. Under these circumstances, we have now the honor to address ourselves to Government, feeling assured that they will, in view of the facts, restore to our client, Mrs. Sarstedt, the amount deposited in the Savings' Bank of Neemuch and standing to the credit of the late John Osborne, with interest thereon from the date of his death, *i.e.*, the 11th December 1868, which was so wrongfully paid to, and misappropriated by, Mrs. Maria Osborne. We trust that our application may, if necessary, be at once inquired into, and that an early answer may be received on the subject. Any further documentary evidence which may be required we shall be happy to place at the disposal of Government.

From Messrs. HEARN, CLEVELAND, AND PEILE, to the Manager or Clerk in charge of the Government Savings' Bank, Neemuch, dated 18th July 1872.

We wish to make some inquiries with regard to a sum of Rupees 1,200 which, we are informed, stood to the credit of the late Honorary Ensign and Assistant Commissary John Osborne at the time of his death, which took place at Neemuch on the 11th day of December 1868, and should be obliged by your informing us whether such was the sum which stood to the above credit at the time which we mention, and whether such sum has been paid over to any person as representing the deceased, and if so, under what authority, and if not, whether such sum has remained in the Bank to the above credit down to the present time and at what rate of interest. We may mention that we make these inquiries on behalf of the only grandchild of the deceased gentleman.

From A. E. PEILE, Esq., to the Manager or Clerk in charge of the Government Savings' Bank, Neemuch, dated 25th September 1873.

I wrote to you on the 18th day of July 1872 to make inquiries as to a balance of Rupees 1,200, being the balance which appeared to the credit of Mr. John Osborne on the 1st day of January 1867, but you have never answered my letter.

2. I request that you will, without further delay, favor me with an answer to my above letter, and I give you notice that, in case I do not receive an answer on or before the 30th instant, I shall conclude that the above-mentioned amount did stand to the credit of Mr. Osborne on the above-mentioned date, and shall advise my client to act accordingly.

Extract from the " Times of India " of the 21st August 1875 of an important Decision in Appeal under the Regimental Debts Act, 1863.

ELIZABETH SARSTEDT, PLAINTIFF AND APPELLANT, *versus* THE AGRA BANK, DEFENDANTS AND RESPONDENTS.

The case was heard before the Chief Justice and Mr. Justice Bayley. The Hon. Mr. Scoble and Mr. Pigot, instructed by Messrs. Hearn, Cleveland, and Lee-Warner, appeared for the appellant, and Mr. Farran and Mr. Inverarity, instructed by Messrs. Fletcher and Smith, for the respondents.

The original suit out of which this appeal arose was filed by Mrs. Elizabeth Sarstedt, as appears from her plaint, in her capacity as administratrix of the estate of her grandfather, John Osborne, to recover from the Agra Bank certain moneys which had been deposited with them by her grandfather during his lifetime. John Osborne was an Honorary Ensign in the Bombay Army and Deputy Assistant Commissary of Ordnance at Neemuch, where he died on the 11th December 1868 intestate, leaving as his only representatives and next-of kin his widow (the plaintiff's step-mother) and the plaintiff herself. No representation was taken out to the estate till the 6th of June 1873, when letters of administration were granted by the High Court to the plaintiff. The Agra Bank, however, when called upon to do so, declined to pay to Mrs. Sarstedt her share as lineal descendant of moneys deposited in the Bank by John Osborne on the ground that the deposits belonging to him which remained in their hands after his death were paid over to his widow under the instructions of the President of the Committee of Adjustment which assembled on his death under the provisions of 26 and 27 Vic., Cap. 57 (the Regimental Debts Act, 1863). The case was heard by Sir Charles Sargent, who decided it in favor of the Agra Bank.

Mrs. Sarstedt appealed against His Lordship's judgment, and the appeal came on for hearing on the 4th instant. On the conclusion of the arguments advanced on both sides, His Lordship the Chief Justice delivered the judgment of the Court in the following terms :—This suit is brought by Elizabeth Sarstedt and her husband to recover from the Agra Bank certain moneys which were deposited there by one John Osborne in his lifetime. John Osborne was an Honorary Ensign in the Indian Army and held the appointment of Deputy Assistant Commissary of Ordnance at Neemuch, and, in our observations regarding him, the fact must be borne in mind that he belonged to Her Majesty's Indian Army as distinguished from Her Majesty's Army at large—a distinction which is taken in the Regimental Debts Act, 1863. Elizabeth Sarstedt is the administratrix of John Osborne, who appears to have died intestate. She was his granddaughter, and at the time of his death she would appear to have been a girl and unmarried in school at Byculla. John Osborne had a wife, who would appear to have been

his second or third wife, but not the mother of this girl's mother. John Osborne's death occurred on the 21st of December 1868. No doubt if the widow had applied for letters of administration to this Court, she could have obtained them, but she never seems to have made any such application. Therefore she was not armed with such authority as the ordinary civil law would confer on her to give an acquittance to the Agra Bank for this money. The Bank, however, as a matter of fact, did make over the whole of the money to her on some date subsequent to the 12th January 1869, and they seek to defend themselves against this claim by saying that they paid the money to her by order of the Committee of Adjustment which assembled on the death of John Osborne under the Regimental Debts Act, 1863. The question is whether the Committee of Adjustment had any authority to give such a direction as they did under the circumstances on this occasion. It was not contended that the widow held what is called a preferential claim or had preferential charges against the estate of John Osborne, either to the extent of the money paid her by the Bank or to any other extent, or that she was in any way indebted to her. The report furnished by the Committee to Government, which has been put in evidence here by the plaintiff, states that the preferential charges had been all paid by the widow. I do not know that it is a very material circumstance in this case whether they had been so paid by her or whether they had not, because, even if they had been paid by her, we fail to perceive the authority in the Act for making over this property to her. My own impression is that, in the absence of evidence to the contrary, we ought to take it that the Committee had performed their duty as they stated they had done, and that the preferential charges were paid. What these preferential charges are is stated in the fourth section of the Regimental Debts Act, 1863. They are payable in preference to all other debts and liabilities, and are (1) expenses of last illness and funeral ; (2) military debts, namely, sums due in respect of quarters, mess, band, and other regimental accounts ; military clothing, appointments and equipments, not exceeding a sum equal to six months' pay of the deceased, and having become due within eighteen months before his death, including sums due to any agent or to any paymaster, quartermaster, or other officer, on any such account, or on account of any advance made for any such purpose, to which shall be added, where the death occurs out of the United Kingdom, (3) servants' wages, not exceeding two months' wages to each servant ; (4) household expenses incurred within a month before the death, or after the last issue of pay to the deceased, whichever is the shorter period. The surplus only, the fifth section states, of the personal property of an officer or soldier dying on service remaining over after payment of preferential charges shall be considered personal estate of the deceased, with reference to the calculation of probate duty, or of any other tax or percentage, or for any of the purposes of administration or distribution, so that that section is important in this way, showing that the surplus means whatever personal property is left remaining over after payment of preferential charges. If, therefore, we take it that the whole of the preferential charges were paid by the widow as we are bound to take it (we must take the evidence), the whole of the property remaining in the hands of the Committee was surplus. Now, the next section to which it is important to refer is Section 7 ; it says that " immediately on the death of an officer or soldier on service, such committee of officers as may be prescribed by Royal Warrant, according to the circumstances of different cases, hereinafter called the Committee of Adjustment, shall secure all such of his effects as, where the death occurs in the United Kingdom, are in camp or quarters ; and where the death occurs out of the United Kingdom, or within the station, colony, or command. Now, we are willing to assume, for the purposes of this case, that this money lying in the Agra Bank in the city of Bombay was within the command, and was such property as the Committee of Adjustment might have secured under this section. The Committee, it appears, on the 23rd December 1868, wrote to the Military Secretary to Government, Colonel Macdonald, to ascertain whether, on the widow paying the preferential charges, the property of the deceased John Osborne might be made over to her, and was informed, in reply, by the Military Secretary to Government, that that could be done. Now, we fail to find any authority in the Act for doing what the Military Secretary to Government informed the Committee of Adjustment might be done. We think that the contention, that the property in the hands of the Committee of Adjustment, inasmuch as they had not paid the preferential charges, could not be regarded as surplus, is not sustainable. We think that the whole on their hands after the preferential charges were paid by them or the widow or the next-of-kin would be surplus, and being surplus, must be disposed of as the Act directs. The tenth section states how the surplus is to be disposed of. It is this: "The Committee of Adjustment shall, according to the circumstances of the case, remit or lodge the surplus aforesaid to, or in the hands of, such paymaster or officer or person, at such time or times, in such manner, and together with such accounts, vouchers, reports, and information as may be prescribed by Royal Warrant." Then we turn to the Royal Warrant. The clause of the Royal Warrant applicable to such a case as the present is Clause 17, which is as follows:—Where the death occurs in India, the deceased not being a soldier of Her Majesty's Army" (which was the case here; he was in Her Majesty's Indian Army; the distinction is taken throughout the Act), "the Committee of Adjustment are to remit the surplus to the Military Secretary to the Government of the Presidency in which the deceased was quartered." Then it may be said that they being so directed by the Royal Warrant, if the Military Secretary authorized the payment of this money to the widow, that would be a sufficient protection to the Agra Bank for paying her the money in their hands, but the answer to that is that what the Military Secretary has to do is expressly provided by the Act. It is in Section 12. We here find the same term "or other officer or person" as is used in the tenth section. This is what the twelfth section says:—"Where the death occurs in India, the deceased not being a soldier of Her Majesty's Army, the following provisions shall take effect:—(1) The paymaster or other officer (that is, the Military Secretary) or person aforesaid shall, as soon as may be after receiving the surplus aforesaid, publish such notice (stating the amount of the surplus, other particulars respecting the deceased and his property,) as may be prescribed by Royal Warrant, together with a notice stating that all claims by creditors against the property of the deceased are to be lodged with such paymaster or other officer or person, who shall retain the surplus for two months after the first publication of such Gazette notice as aforesaid, and shall receive and record all claims lodged with him accordingly; (2) if claims are so lodged, not exceeding in the whole such absolute amount or such proportion of the surplus as may be prescribed by Royal Warrant, according to the circumstance of different cases, then such paymaster or other officer or person shall, at the expiration of the said two months, proceed to discharge the demands of the claimants who have lodged claims with him, unless, under the special circumstances of the case of the deceased, it appears to him inexpedient or unjust to do so (but nothing of that kind seems to have been done in this case by the Military Secretary); (3) in that case, or in case the claims lodged exceed in the whole the absolute amount or the proportion aforesaid, then such paymaster or other officer or person shall without discharging those claims, or any of them, transfer the surplus aforesaid to the Administrator-General for the Presidency; (4) where such paymaster or other officer or person does not so transfer the surplus, he shall dispose thereof or of so much thereof as remains after the discharge of any claims as follows:—where the amount exceeds £100, he shall pay it over to the representative of the deceased in India, if any; where the amount does not exceed £100, it shall not be necessary for any purpose that representation to the deceased be taken out in India; but, if representation is taken out there, such paymaster or officer or other person shall pay the amount over to the representative in India; where the amount does not exceed £100, and representation in India is not taken out, such paymaster or other officer or person shall dispose of the amount, or part thereof, in India (in such manner as may be prescribed by Royal Warrant for such cases) for the benefit of the widow and of children or other near relatives (if any) of the deceased, or of some of such persons, being in India." Now, it is very clear that the Military Secretary, or paymaster, or other officer, where the assets exceed £100, have no authority to make any payment either to the widow or next-of-kin unless they are creditors, and here the assets did considerably exceed £100. They seem to have amounted to about Rupees 16,000. There was not that amount in the Bank, but the Bank had upwards of Rupees 4,000 belonging to the deceased. Now, we do not find that the Military Secretary has in any respect followed what is stated here. We have no evidence that he published any notice, no evidence that he proceeded

to discharge the demands of the claimants, and we have no evidence that he made the moneys over to the Administrator-General: in fact he did not. That would seem to have been his proper course if he had assets in his hands which he had not applied in payment of debts. The very provision that in cases where the assets were less than £100 payment might be made by the proper authority to the widow or next-of-kin is an exclusion of the right to make such payment in any other case unless they claim as representatives. I now go back to Section 8. The argument is that, unless the preferential charges are paid immediately on the death of the widow or next-of-kin, and before the Committee of Adjustment have taken any steps under Section 7, they will not be bound to retire from the representation, but that does not appear to us to be the true construction of Section 8. We think that whenever the preferential charges are paid, the intention of Section 8 is that the Committee of Adjustment shall not further interfere in relation to the property. Now, the word "further" has been relied upon as referring expressly to Section 7, but the word "interfere" is coupled with it, and "interfere" is a word of very wide extent. It would include either a collection of assets or a distribution of assets; either would be an interference; and we think that, as soon as the preferential debts had been paid, the Committee of Adjustment must, except for the purpose of reporting, be regarded as *functus officio*, and that they ought then to have made over whatever property they had, which would come under the denomination of surplus, to the Military Secretary to Government. We have already stated that the Military Secretary is the "other person" pointed out by the Act. There is no authority for him when the assets exceed £100 to pay to the widow or next-of-kin except upon letters of administration, probate or certificate of administration—some authority, in fact, which is sufficient. However, it is said that this Act is so very obscure and ambiguous that, inasmuch as the Committee of Adjustment appear to have been acting up to the 13th of March 1869, the date on which they sent in their report, that fact would entitle us to suppose that the Committee were authorized to direct the application of the money in the hands of the Agra Bank for such purposes as they might think proper, and that, if both parties acted *bonâ fide* (and there was no reason to suppose the contrary), the Bank would be justified in paying the money over by order of the Committee of Adjustment. Now, we do not think that that is a sound argument. We think that the very fact that the letter of the 12th January 1869 was written by the President of the Committee to the Bank was sufficient to warn the Bank that the period had arrived when the civil law stepped in to regulate the case; that the Committee, in fact, had denuded itself of the property of the deceased completely and paid it over to the widow. It is true that they said they did so under the authority of the Military Secretary to Government, but they had nothing left on which they could operate, and the mere fact that their report remained unmade did not leave them an existing body for the purpose of dealing with the assets. Section 22 has been relied upon in protection of the Bank in connection with the order of the Military Secretary. This section is as follows:—"Any property of an officer or soldier dying on service coming, under this Act, to the hands of any paymaster or other officer or person shall not, by reason of so coming, be deemed assets or effects at the place in which that paymaster or other officer or person is stationed or resides, and it shall not be necessary by reason thereof that representation should be taken out in respect of that property for that place. When, under this Act, any such property is to be paid or delivered over to the representative of a deceased officer or soldier or other person entitled to receive the same—if such payment or delivery is to be made in India, then the Military Secretary to the Government of the Presidency in which the deceased was quartered, and if such payment is to be made elsewhere than in India then the Secretary of State for War, or the Secretary of State for India in Council, as the case may be, may order that such property be transmitted to any other place where the same can be more conveniently paid or delivered over as aforesaid, and the obedience to any such order by any paymaster or other officer or person in whose hands such property is, shall be a sufficient discharge to him, and he shall not be liable in any manner by reason of such property having been in his hands and having been transmitted under any such order." Now, the first thing that strikes one here is that the payment which it contemplates is a payment to the representative of the deceased officer or soldier, and there has been no payment on this case to the representative. The representative we find in the Act means any person taking out representation. It means the person armed with probate, letters of administration, or certificate of administration, so that that section cannot possibly protect the Bank even if they came within the words "a person." But we very much doubt whether the Bank does come within these words. A special meaning is given to them. It will be found in the tenth section. It means paymaster, officer, or person designated in the Royal Warrant, and the person designated in the Royal Warrant in this particular case is the Secretary to Government for receiving assets. But even if the words did cover the Bank (it is unnecessary for us to determine that) the payment referred to is to a representative, and the Bank therefore can claim no protection under it. Lastly, we come to Section 35, which says: Every payment or application of money and every sale or other disposition of property made by the Secretary of State for War, or by the Secretary of State for India in Council, or by any Committee of Adjustment, or by any paymaster or other officer or person in pursuance of this Act, or of any Royal Warrant for carrying this Act into effect, shall be good and valid as against all persons whomsoever; and every such Secretary of State, and every officer belonging to any such Committee, and every such paymaster, officer, or person as aforesaid shall be, by virtue of this Act, absolutely discharged from all liability in respect of the money or other property so paid, applied, or disposed of." Now, it is a payment or application of money in pursuance of the Act which is spoken of. We are willing, as far as this suit is concerned, to give this section—without saying that is the true construction to give it—the most labored construction it can bear, which would be that these words mean any payment, application, or act *bonâ fide*, believed by the party paying it to be in pursuance of the Act, albeit really it might not be so. But there can be no *bonâ fides* where there is carelessness—where there is such carelessness as amounts to positive negligence. Here, if the Bank had looked into the Act, they would have seen that neither the Committee of Adjustment nor the Military Secretary to Government had any right to make over these assets exceeding as they did a £100 in value to the widow or next-of-kin unless they were armed with probate or letters of administration, for the direction is positive as to what is to be done with the assets; whether the preferential charges were paid or were not paid, there is no authority in the Act for the payment over by either the Committee of Adjustment or the Military Secretary to Government of the assets or any portion of them to the widow or next-of-kin in such a case as the present unless they filled the character of creditors, preferential creditors, or representatives. This was not the case here, and, although the widow might have become the representative if she pleased, she did not do so and was not in the position of the executrix in the case of Pemberton *vs.* Chapman, which has been cited. The executrix there, even though she had not taken out probate, had authority under the will. Here the widow was quite differently situated, having no authority whatever, and there the husband had not at that time signified his assent to her taking out administration as in the case cited. For these reasons we think that the decree of the learned Judge must be reversed; and, as we think the plaintiff has behaved very moderately here in claiming only two-thirds of the deposit, we think she is entitled to recover two-thirds of the sum paid over to the widow with simple interest at five per cent. from the date of such payment till payment to the plaintiff.

Mr. Scoble represented to the Court that the Agra Bank had acted with somewhat unnecessary harshness in issuing execution against Mr. Sarstedt, and getting him down all the way from Jamalpore to Bombay, while an appeal was actually pending, and he thought that, having regard to that fact and to the circumstances of the plaintiffs, who occupied a humble position in life, this was a case in which the Court would feel justified in departing from the ordinary practice and allowing the plaintiffs the costs of the suit as well as of the appeal.

The Chief Justice remarked that the Bank seemed very ready to arrest Mrs. Sarstedt's husband, and, having regard to all the circumstances of the case and to what had occurred, the plaintiff must have all her costs. The decree would therefore, be for the plaintiff for Rupees 3,444-15-8, interest at five per cent. on Rupees 3,242-4-10 from 11th February 1869 till judgment, with costs of suit and appeal, and interest on judgment at six per cent. till payment.

Mr. Justice Bayley expressed his entire concurrence in the remarks which had fallen from His Lordship the Chief Justice.

No. 2031.

The late John Osborne had a deposit in the Savings' Bank at the time of his death, and the accompanying copy of correspondence will fully obtain the circumstances under which the money was disbursed by the Bank. It will be observed that the money was paid to the Committee of Adjustment direct as required by the Act, and not to the widow.

GOVERNMENT SAVINGS' BANK,
NEW BANK OF BOMBAY,
2nd November 1875.

W. FRASER,
Deputy Secretary.

From Lieutenant-Colonel W. F. ANDERSON, 28TH N.I., President, Committee of Adjustment on the Estate of the late Ensign John Osborne, Neemuch, to the Secretary, Government Savings' Bank, Bombay, dated 23rd December 1868.

Mr. John Osborne, Commissary of Ordnance at this station, having died here on the 21st instant, I beg to forward his pass-book by book-post, and to request that his account may be made up to that date and the book returned to me.

From W. FRASER, Esq., Deputy Secretary, New Bank of Bombay, to the President, Committee of Adjustment, Neemuch, dated 4th January 1869, No. 1285.

In reply to your letter of 23rd ultimo, I have the honor to say that the balance at the credit of the late John Osborne, Commissary of Ordnance, will be rendered available on your furnishing the Bank an extract from Garrison Orders appointing you as President of the Committee of Adjustment on the estate and effects of the deceased.

From Lieutenant-Colonel W. F. ANDERSON, 28th N.I., President, Committee of Adjustment on the Estate of the late John Osborne, to the Secretary, Government Savings' Bank, Bombay, dated 12th January 1869.

I beg to enclose an extract of the order appointing me President of the Committee of Adjustment on the estate of the late Ensign J. Osborne, and have now to inform you that, by direction of the Secretary to Government in the Military Department, I have made over the whole of the estate in question to his widow, Mrs. Maria Osborne, whose signature is attached, and to whose orders I request you will attend as to the disposal of the money deposited with you.

I enclose true extract from Brigade Order appointing me President, Committee of Adjustment.

Extract from Brigade Orders by Brigadier-General Montgomery, Commanding at Neemuch.
After Orders.

Monday, 21st December 1868.

IV. A Committee of Adjustment will assemble at the quarters of the late Ensign Osborne at 4 P.M. to-day to take an inventory and dispose of the effects of the deceased agreeably to the Regulations.

President.
Lieutenant-Colonel Anderson, 28th Regiment, N.I.
Members.
Captain Freeborn, 2-1 The Royal Regt.
Lieutenant Murphy, 2nd Regiment, L.C.

By order,
A. WARDROP, Captain,
Brigade-Major.

Proceedings of the Madras Government, Financial Department,
21st February 1876.

From W. FRASER, Esq., Deputy Secretary, New Bank of Bombay, to the President of the Committee of Adjustment on the Estate of the late Ensign John Osborne, dated 21st January 1869, No. 1364.

I beg to acknowledge the receipt of your letter of 12th instant, accompanied with an extract from Garrison Orders appointing you as President of the Committee of Adjustment on the Estate and Effects of the late John Osborne, and to forward a draft No. 31 herewith on the Military Treasure Chest, Neemuch, in your favor for Rupees 1,324-7-0, being the balance at the credit of the deceased's account closed to date.

From Lieutenant-Colonel W. F. ANDERSON, 28th N.I., President of the Committee of Adjustment on the Estate of the late Ensign John Osborne, Neemuch, to the Secretary, Government Savings' Bank, Bombay, dated 27th January 1869.

I beg to acknowledge the receipt of your letter of the 21st January, enclosing a transfer receipt No. 31 on the Military Treasure Chest here for Rupees 1,324-7-0, being the amount of balance with interest at the credit of the deceased John Osborne.

I regret you should have sent the draft to me, as the whole of the estate has, by order of the Military Secretary to Government, been given over to the deceased's widow, Mrs. Maria Osborne, and who has left for Bombay. I shall get a transfer receipt for the amount and send it to you to be placed to her credit; and, when she calls, I shall feel obliged by your explaining this to her.

From Lieutenant-Colonel W. F. ANDERSON, 28th N.I., *President of the Committee of Adjustment* on the Estate of the late Ensign John Osborne, Neemuch, to the Agent, Government Savings' Bank, Bombay, dated 17th February 1869.

I beg to enclose transfer receipt No. 2390 for Rupees (1,324-7-0) thirteen hundred and twenty-four and annas seven, which I shall feel obliged by your placing to the credit of Mrs. Maria Osborne, who has an account with you.

From W. FRASER, Esq., Deputy Secretary, New Bank of Bombay, to the President of the Committee of Adjustment on the Estate of the late Ensign John Osborne, Neemuch, dated 22nd February 1869, No. 1474.

I beg to acknowledge the receipt of your letter, dated the 17th instant, enclosing a remittance for Rupees 1,324-7-0; the amount is realized and placed to the credit of Mrs. Maria Osborne.

No. 186. ORDER THEREON, 21st February 1876, No. 368.

Communicated to the Directors of the Bank of Madras and to the Military Department.

(True Extract.)

Chief Secretary.

To the Directors of the Bank of Madras.
,, Military Department.
,, Board of Revenue.
,, Revenue Department.

Exd. J. W. Fischer.

No. 753.

GOVERNMENT OF INDIA.

FINANCIAL DEPARTMENT.

Accounts.

To

The SECRETARY to the GOVERNMENT of BOMBAY.

Fort William, *the 9th February* 1876.

Sir,

I am directed to acknowledge the receipt of your letter No. 4164 (Financial), dated 14th December 1875, forwarding an application from Messrs. Hearn, Cleveland and LeeWarner, Solicitors of the Bombay High Court, for sanction to the payment to their client, Mrs. Catharine Sarstedt, of certain deposits made in the Government Savings Bank at Neemuch by her maternal grandfather, the late Ensign John Osborne, to whose estate she has taken out letters of administration.

2. In reply I am directed to state that the Governor General in Council is pleased to sanction the payment to Mrs. Sarstedt of two-thirds of the money standing in Ensign John Osborne's name in the Neemuch Savings Bank at the time of his death, together with simple interest at the proper rate from that date to the date of payment, the remaining one-third being treated as having been paid to Mrs. Maria Osborne as in a due course of administration.

3. His Excellency in Council is, however, of opinion that the Directors of the Bank of Bombay should be called upon to show cause why the loss in this case should not fall upon the Bank, in accordance with the terms of the contract with the Bank for the management of the public debt.

4. The point involved in the present correspondence will be communicated to all Government Savings Banks throughout India.

I have the honor to be,

Sir,

Your most obedient Servant,

R. B. CHAPMAN,

Secretary to the Government of India.

Copy of the above letter, and of the one to which it is a reply, with enclosures, forwarded for the purpose indicated in the last paragraph of this letter, and for information and guidance as follows :—

To the several local Governments and Administrations.

To the Comptroller General, and to the several Accountants General and Deputy Accountants General in independent charge.

[signature]

Under Secy. to the Govt. of India.

To The Govt of Madras —

O. S. G. P.—No. 577 C. F.—9-2-76.—160.

Govt. of 1876 Madras.

FINANCIAL.

To

The Directors of the Bank of Madras, &c., &c., &c.

Dated February, 21st.

Issued

Recd. *Encl.*

G.O. 21st February 1876, No 368.

FEBRUARY.

Nos. 185-186.

Government Savings' Bank.—Certain papers received from Government of India regarding an illegal payment from the Neemuch Savings' Bank communicated.

Finance civil (1876) Depn
(Govt. Savings Bank)

From The Government
of India
Dated 9th } February 1876.
Recd 17th }
No. 753.

No 405 /

1 Enclos
3 K.W. thes
& of Con

Covering papers respecting
on the liability of the Savings
Bank for having illegally
made payment of the assets
standing at credit of a deceas
depositor

With ordr

21 February 1876 No 368

Concurd to the Directors of
the Bank of Madras
& to the Military Dept

C.H.

MA
19/2

2 The Directors of the Bank of Madras 6
" Military Department 11
" Board of Revenue 51 50
Desp 4/3

Govt. of (1876) Madras.

Financial

G.O. 21st February 1876, No. 368

Nos. 188-6

Post Savings Bank.

Certain papers received from Government of India regarding the illegal payment to one Mrs Osborne of the amount standing at credit of her late husband in the Norwich Savings Bank, communicated.