

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	168-169	Press
		~~Mis.~~
	58-60	
Dated	8-2-19	1893

Not to be folded or roughly handled

Fort St. George, Judicial Consultation, 8th February 1859.

Read the following letters.

No. 58. From T. S. SMYTH, Esq., Advocate General: to the Military Secretary to Government, Fort Saint George, dated 11th January 1859.

SIR,

Dated 26th November 1858. I have the honor to acknowledge the receipt of your letter requesting my opinion upon certain points at issue between yourself and the Administrator General, and in reply thereto to inform you that in my opinion you are perfectly correct in the view you take in para. 5 of your letter respecting the duty cast upon you, as Military Secretary to Government, by the 61st to 65th Sections of the Mutiny Act, (20 and 21 Vict., Chapter 66), in respect of the distribution of balances of Military Estates under Rupees 1,000.

2. I do not agree with the Administrator General if he maintains that he is "precluded" from administering to Military Estates under Rupees 500, by Section XI and XLIII of Act VIII of 1855; and I am of opinion that if he were *disposed* to comply with your "requisitions" to administer in such cases, the Court would grant him administration on his application, upon being informed of the facts.

3. As however he objects to do so, I must admit that his objection is perfectly "tenable"; that he is not compellable to administer in such cases, the Act not casting any such duty upon him, and not requiring him to comply with any "requisitions" from you to that effect. You can only, in my opinion, "request" not "require" him to do so, and he is legally entitled to accede to your request, or refuse it as he pleases; while Section XLIV shews clearly that he is not compellable to grant a certificate in such cases "unless he shall be satisfied" on the points therein specified.

4. I apprehend that the real objection arises from the office being so ill-paid, that there is an indisposition (perhaps not unnaturally) to do any thing not positively required by the Act.

5. The only remedy for this state of things, and for the difficulty you experience in the cases of Military Estates under Rupees 500, lies, in my opinion, in an application to the Legislative Council to amend the Act. If this be done, it will be very desirable, it appears to me, to declare explicitly what the meaning of the Legislature is as to the rights of creditors to administer to the Estates of their debtors; and as to how all Estates under Rupees 500 are to be dealt with, when the Administrator General declines to grant any certificate to any claimant.

6. By Section IX, part first, no letters of administration shall be granted to any one but the next of kin, or the Administrator General; by Section XI the Administrator General is "required" to administer to Estates exceeding Rupees 500, but *not* to any under that amount; and though he *may*, if "satisfied," grant certificates, under Section 43 in the case of Estates under Rupees 500, yet if not so "satisfied," the Act says he "shall not be bound" to do so; thus, it seems to me, leaving the case of *all* Estates under Rupees 500 where he is not so "satisfied," as to grant a certificate, wholly unprovided for—unless indeed, under Sections 12 or 14 a case could be made out of "danger to be apprehended of the misappropriation of the assets," or of "misappropriation or waste of such property," in which cases the Court may *order* the Administrator General to apply for administration, or to collect and take possession of the property; but such a case could never be made out respecting assets or property in your hands—and those provisions moreover are limited to "property" and "assets" *left* within the local limits of the jurisdiction of the Supreme Court. Again, the *second* part of Section IX merely gives the Administrator General a "*preference*" that is, it appears to me, in cases where he either *must* apply, ex. gr. under Section XI, where the Estate is above Rupees 500, or under Section XII, by order of the Court, or where he *chooses* to apply, which, I think, the Act leaves him *at liberty* to do in *any* case, without regard to the amount of the Estate—over the creditor, leaving it to be *inferred* that, in cases where the Administrator General is not compelled or compellable to apply, and does not choose to do so, the creditor *might* apply for, and the Court *might* grant him Administration; but here the first part of the Section interferes, and says that in all cases the Administrator General and he only shall have Administration, unless it be granted to the next of kin; thus excluding the creditor.

It appears to me that either the creditor should be declared entitled to apply for Administration in such cases, or the Administrator General be compelled to administer—if not in all cases, at least in those of Military Estates, when required by you—except where he grants a certificate.

Fort St. George, Judicial Consultation, 8th February 1859.

Referred to the Judicial Department in view to the necessary application to the Legislative Council being made from that Department.

Fort Saint George, }
18th January 1859. }

(Signed) H. MARSHALL, Colonel,
Ag. Secretary to Govt.

With a letter to the Advocate General, dated 26th November 1858.

From Colonel C. A. BROWNE, Military Secretary to Government; to the Advocate General,
Madras, dated 26th November 1858.

SIR,

I have the honor to request that I may be favored with your opinion on the following points.

2. The Administrator General declines to administer to Military Estates under Rupees 500 in amount, stating that he is precluded from doing so by the provisions of Act VIII of 1855, Sections XI and XLIII.

3. With reference to Section LVII of the same Act, and to Sections LXI to LXV of the Mutiny Act for the Indian Army, (20 and 21 Vict., Chapter 66), I beg to be informed if his objection is tenable.

4. If not tenable, how am I to proceed, the Administrator General refusing to act on my requisition?

5. If tenable, how am I to proceed, the Mutiny Act, as I submit, not contemplating distribution by the Military Secretary of balances under Rupees 1,000, in the sense of apportionment among creditors—of the validity of whose claims he may have no means of judging—but only distribution among relatives or legal representatives.

No. 59. ORDER THEREON, No. 168; dated 8th February 1859.

Resolved that the papers received from the Military Department, be communicated to the Member for Madras of the Legislative Council.

2. The Government do not think that creditors should be allowed to administer in any case under Act VIII, 1855, whether the assets exceed in value or fall short of Rupees (500) five hundred. With respect to Military Estates below that value, they are of opinion, that on the requisition of the Secretary to Government, Military Department, the Administrator General should be compelled to administer or to grant a certificate. In cases of Estates non-Military they think he should be obliged similarly to administer or grant certificate by the order of Her Majesty's Supreme Court.

3. The Right Honorable the Governor in Council resolves to forward the papers with this opinion to the Member for Madras of the Legislative Council and to leave it to him to bring a proposition to the above effect before the Council either now, or, at his discretion, when the amendment of Act VIII, 1855, may be before the Legislature.

(Signed) T. PYCROFT,
Chief Secretary.

No. 60. To H. FORBES, Esq., Member for Madras of the Legislative Council of India,
dated Fort St. George, 8th February 1859, No. 169.

SIR,

I am directed by the Right Honorable the Governor in Council to transmit to you the accompanying correspondence between the Military Secretary and the Advocate General, relative to the administration of Military Estates limited to Rupees 500 in value.

From the Military Secretary, to the Advocate General,
dated 26th November 1858.
From the Advocate General, to the Military Secretary,
dated 11th January 1859.

2. The Government do not think that creditors should be allowed to administer in any case under Act VIII of 1855, whether the assets exceed in value or fall short of Rupees (500) five hundred. With respect to Military Estates below that value, they are of opinion, that on the requisition of the Secretary to Government, Military Department, the Administrator Ge-

Fort St. George, Judicial Consultation, 8th February 1859.

neral should be compelled to administer or to grant a certificate. In cases of Estates non-Military, they think he should be obliged similarly to administer or grant certificate, by order of the Supreme Court.

3. In communicating to you the opinion of the Right Honorable the Governor in Council, I am to add that his Lordship leaves it to you to bring a proposition to the above effect before the Legislative Council either now, or, at your discretion, when the amendment of Act VIII of 1855 may be before the Legislature.

(Signed) T. PYCROFT,
Chief Secretary.

Judicial Department.

№ 168

Extract from the Minutes of Consultation.
Dated 8th February 1859.

Dated 8th February 1859.

the following letter from the African
Read **Excise** **Govt**
General to the African Govt.
Presented to the African Dept.

Here Inter dated 18th Jan.
uary 1859.

HL



Resolved that the papers received from the ally. Deth. be communicated to the Member for Madras of the Legislative Council -

2 - The Government do
not think that Creditors
should be allowed to ad-
-minister in any case
under Act VIII. 1855 - whe-
-n the assets exceed in
value or full share of
Rs 500 per hundred -
With respect to military
estates below that value

Forwarded to the
Court to administer
a final order of sale.

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Court to administer
a final order of sale.

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My own opinion that
on the requisition of the
Secretary to the Govt. Dep.
the Administration should
be allowed to administer
a final order of sale
a certificate. In cases
of estates non military
they think he should be
obliged
similarly to administer
- his or final certificate
by the order of the Supreme
Court -

3. The R.H. the fil
resolves to forward the
papers with this opinion
to the Member for Madras
of the Leg. Council &
to leave it to his discretion
to bring a proposition to
the above effect before the
Council either now, or
at his discretion; when
the amendment of Act
VIII. 1855 may be before the
Legislator. J.P.

Sup. 15th

Judicial Department.
No. 169.

H. Forbes Esq.
Member for Madras of the
Legislative Council of India.

Sir,

I am directed by the R.
Honble the Governor in
Council to transmit to you
the accompanying corres-
pondence between the Mi-
litary Secretary & the Adv.
Genl. General relative to the
administration of Military
Estates limited to Rs. 500 in
value.

2. The Government do not
think that creditors should
be allowed to administer in
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1855 - whether the assets ex-
ceed in value or fall short
of Rupees 500 five hundred.
With respect to Military
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the requisition of the Secre-
tary to Government, mili-
tary Department, the
Administrator General
should

From the Mily. Secy. to the Adv. Genl.
Dated 26. Nov. 1858.
From the Adv. Genl. to the Mily. Secy.
dated 11. Janry. 1859.

W.M.

Military Dep.
Judicial Dep. } Sup. 15th

should be compelled to administer or to grant a certificate. In cases of Estates now-military they think he should be obliged similarly to administer or grant certificate by order of the Supreme Court.

3. In communicating to you the opinion of the Right Honorable the Governor in Council, I am to add that his Lordship leaves it to you to bring a proposition to the above effect before the Legislative Council either now, or, at your discretion, when the amendment of Act VIII of 1855 may be before the Legislature.

John George
8 Feb 1859

JG

Here follows

To the Hon. Council of the
Province of New Brunswick

Ms 10 of 1860

1860.

Le Com: 8 - February,
Judicial 1859. Depart:

No 168

Exhibits David: of Howard
Booby

To the Members, for all that,
of the Legislative Council
of that era

Feb 28 / 1859.

J. H. 489-

Admitting the entire
goodness between the Wilby
family and the Stora
you will not allow to the
franchise of Wilby
Estates limited to 1000
in value with an income
less than 4000 do not
think that creditors should
be allowed to administer
in any case under act
VIII of 1865 and leaving
it to Mr Stokes to bring
or

a resolution before the
Jury Council to the effect
that on the receipt of an
order to pay to Lord Smith
of the wages of Lord Smith
Doubtless the Administrator
would should be concerned
to administer or to grant
a certificate. &c.