M.R.O. 1—39,000—16-10-23.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1699 Press
70-71 ~~Mis.~~

Dated 20-12-~~19~~83

Not to be folded or roughly handled

No. 70. Read the following letter from J. R. BOYSON, Esq., Government Solicitor, Madras; to the Chief Secretary to Government, Fort Saint George, dated Chittoor, 28th November 1859, No. 1807.

Proceedings of Government in its Judicial Department, dated 17th November 1859, *No.* 1566.

1. I have the honor to acknowledge the Proceedings of Government, noted in the margin.

2. I submitted same together with all previous correspondence relating to the subject, for the consideration of the Advocate General and I have also conferred with him thereon.

3. I now forward a copy of his opinion.

COPY—OPINION.

I see no objection whatever to the addition of the words "charging the Estate with a commission of only Rupees three per centum," as proposed by the Military Secretary, on the contrary, I think them an improvement.

With reference however to the other alteration proposed, viz., the substitution of the words "intervene (without taking out administration) and secure and distribute the assets of" instead of the words "take proceedings to obtain letters of administration," I think it not advisable. I do not think it desirable to introduce the anomaly of making the Administrator General, *as such*, act without letters of administration, or that when, in all other cases, he can only act, under the authority of the Court, a class of cases should be introduced of which the Court shall have no cognizance. The expense, averaging Rupees 35, is not I think a sufficient reason for introducing an anomaly which I think the Court would object to and remonstrate against.

It would be better I think that the Military Secretary should retain these Estates altogether, than that this alteration should be made.

(Signed) THOS. SYDNEY SMYTH,
Advocate General.

November 23rd, 1859.

(True Copy.)
(Signed) J. R. BOYSON,
Government Solicitor.

No. 71. To H. FORBES, Esq., Member for Madras of the Legislative Council of India; dated Fort Saint George, 20th December 1859, No. 1699.

I am directed by the Honorable the Governor in Council to acknowledge the receipt of your letter of the 7th September last, forwarding the draft of a Bill for the Amendment of Act VIII, 1855, or the Administrator General's Act.

From Advocate General, 3rd November 1859.
Memo. by Military Secretary, 8th November 1859.
From Government Solicitor, 28th November 1859.

2. The Draft Bill has been submitted for the observations of the Advocate General and of the Military Secretary to Government. I transmit to you the remarks of these Officers.

3. Under the circumstances stated by Mr. T. S. Smyth in his letter of the 3rd ultimo, the two first Sections of your Draft Bill do not appear to be called for. In the two last Sections Mr. Smyth has suggested some merely verbal alterations.

4. Colonel Marshall, 8th November, submits that, "with a view to a clear understanding of Section III of the Draft Bill, and in order to bring it in accordance with the wording of the proposition submitted by him and concurred in apparently both by Government and the Advocate General, it appears necessary that the words "*intervene (without taking out Letters of Administration) and secure and distribute the assets of*," should be substituted for the words "*take proceedings to obtain Letters of Administration to*" and that the words "*charging the Estate, only with a commission of Rupees three per centum*" be added to the proposed Section."

5. The Advocate General sees no objection to the second of these alterations, but considers the first not advisable. "He does not think it desirable to introduce the anomaly of making

the Administrator General, *as such*, act without Letters of Administration, or that when in all other cases, he can only act, under the authority of the Court, a class of cases should be introduced of which the Court shall have no cognizance. The expense, averaging Rupees 33, is not he thinks a sufficient reason for introducing an anomaly which he thinks the Court would object to and remonstrate against. It would be better he thinks that the Military Secretary should retain these Estates altogether, than that this alteration should be made."

6. The Madras Government I am instructed to state do not concur in Mr. Smyth's views and would wish the first as well as the second of the amendments proposed by the Military Secretary to be adopted. It is, I am to observe, according to the course indicated in paragraphs 4 and 5 of your letter of 17th March last, and according to the practice which, as shown in the Officiating Administrator General's letter of 14th March last, now obtains in Bengal. The expence of obtaining Letters of Administration at Madras (varying from Rupees 33 to 36) may not be as high as at Calcutta but, as shown in the Extract of the Statement annexed to Colonel Marshall's memo. of 17th June last, it bears heavily on Military estates of small value.

7. I am desired to take this opportunity of bringing to your notice that as the law now stands it has been considered by the Government Law Officers that this Government have no power to appoint any person to *act* as Administrator General during the absence of the actual incumbent from sickness or other cause, and that the Supreme Court would not recognize such Officiating Administrator General or grant him Letters.

8. Consequently on two occasions when the Administrator General has been obliged to leave Madras on account of his health, another gentleman has been appointed Administrator General *absolutely*, on the understanding that he would vacate the office on the former incumbent returning, to admit of the latter being re-appointed. Such an arrangement subsists at present but it is inconvenient and seems quite unnecessary.

9. The Madras Government would wish advantage to be taken of the present occasion, to remedy this defect. They would therefore request you to add to the Draft Bill a Section empowering Government to appoint an *Acting* Administrator General when the real incumbent was on authorized leave of absence, the person officiating being of course subject to the same conditions and bound by the same responsibilities as the person for whom he acts.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

704

5

Judicial Department

Memorandum.

From the Government Solicitor (Dated 28th Novr 1859. No. 1807.)

Under the present Administrator General's Act VIII – 1855, that officer cannot be compelled, at the instance of the Military Secretary to Government, to administer to Military Estates under the value of Rupees 500– when they are above that value he must administer when called on so to do by the Military Secretary; in smaller estates it is left to his discretion.–

2. Reference was made to the Member for Madras on the Legislative Council for the purpose of getting this defect in the Act amended. Mr Forbes

Such also appears
from a letter of the Offg.
Advocate General to be the practice now
pursued.

Forbes in reply - 17th March 1859
requested the Government to
consider "whether the present
difficulty may not be over-
come by a short Act declar-
ing that the Administrator
General shall be considered
the legal representative of a
deceased Military man when-
ever the Estate of the deceased
may not exceed 500 Rupees
in value. The object of the
Law obliging the Administra-
tor General to take out Letters
of Administration to large
Estates is, that all parties
may have notice, and
come in to state their prior
claim as Executors under a
Will, or as next of kin, if
they desire to administer
to the Estate themselves, but
this publicity is not necessary
in the case of very small
Estates, and in their case the
Administrator General might
be authorized by Law to ad-
minister without taking out
Letters

Letters of Administration.
If the Government saw no
objection to this course, he
would lay a short Bill, for
giving it effect, before the
Legislative Council.—

3.— Mr. Forbes was re-
quested - 23rd July - to do so -
and on the 7th September for-
warded for the considera-
tion of Government a draft
of the Bill which he would
propose to introduce - Section
III is the only part requiring
remark.—

4. The draft was re-
ferred for the observations of
the Advocate General and
Military Secretary to Govern-
ment.—

5.— Colonel Marshall - 8th
November - submits that
"with a view to a clear un-
derstanding of Section III of
the draft Bill, therewith for-
warded, and in order to
bring it in accordance with
the wording of the proposition
submitted

submitted by him and concurred in apparently both by Government and the Advocate General, it appears necessary that the words "intervene (without taking) out Letters of Administration) and secure and distribute the assets of," should be substituted for the words "take Proceedings to obtain Letters of Administration to" and that the words "charging the Estate only with a Commission of Rupees three per centum" be added to the proposed Section."

6. The Advocate General who has been consulted on Colonel Marshall's proposed amendments sees no objection to the ~~fourth~~ second - but considers the ~~second~~ first not advisable - "He does not think it desirable to introduce the anomaly of making the Administrator General, as such, act without Letters of Administration, or that when in all other cases, he can only act under the authority of the Court, a class of cases should be introduced of which the Court shall have no cognizance The expense, averaging Rupees 35 is not he thinks a sufficient reason for introducing an anomaly which he thinks the Court would object to and remonstrate against It would be better he thinks that the Military Secretary should retain these Estates altogether, than that this alteration should be made."

7. The question then that has to be decided before an answer can be sent to the Member of the Legislative Council on his draft Act, is, whether the Administrator General - should on the application of the Military Secretary be required to act in the case of Military Estates under 500 Rupees without taking out Letters

of

Administration.

8.— It would seem from Mr. Forbes first letter 17th March Para: 5. that he contemplated such a course, and it was then apparently approved by the Advocate General.—

Opinion 27 April— in Proceedings 8 July.

9.— But in the draft Bill subsequently sent by Mr. Forbes there is no such provision.—

10. Intermediately however from Government Solicitor 4 June — Proceedings 8 July.— Mr. Forbes was informed that the expense of taking out Letters of Administration at Madras was less than he had supposed — varying from Rupees 33 to 36.

11. Still this is a heavy deduction from a small estate — in addition to the Administrator General's commission 3 per cent, and charges.

For this see Statement annexed to Col Marshall's Memo of 17 June 1856

12. There is a further matter to be noted quite distinct from the above question.—

13. As the law now stands it is considered very doubtful whether the Government have power to appoint any person to act as Administrator General during the absence of the actual incumbent from sickness or other cause — & whether the Supreme Court would recognize such officiating Administrator General or grant him Letters.—

14. Consequently on occasions when the Administrator General has been obliged to leave Madras on account of his health, another Gentleman has been appointed Administrator General absolutely on the understanding that he would vacate the office on the former incumbent returning, to admit of the latter being re-appointed — Such an arrangement subsists at present, but it is inconvenient

(and

and unnecessary - and moreover might prejudice the original Administrator General, as a question might be raised whether he could count for pension his first term of service.—

15. The present opportunity might be taken to get this matter set right by providing in the present draft Act, that the Government should be empowered to appoint an Acting Administrator General when the real incumbent was on authorized leave of absence - the officiating man being of course subject to the same conditions, and bound by the same responsibilities as the person for whom he acts.—

Disp.d 23d
3 Enclos:

Judicial Department.

No. 1899.

To,

A. Forbes, Esq.
Member for Madras of the Legislative Council
of India.—

Sir,

I am directed by the Honorable the Governor in Council to acknowledge the receipt of your letter of the 7th September last forwarding the draft of a Bill for the Amendment of Act VIII - 1855 - or the Administrator General's Act.—

2.— The draft Bill has been submitted for the observations of the Advocate General and of the Military Secretary to Government - I transmit to you the remarks of these officers.

From Advocate General
3d November 1859.
Memo: by Military Secretary
8th November 1859.
From Government Solicitor
28th November 1859.

Under

3. Under the circumstances stated by Mr. F. A. Smyth in his letter of the 3rd ultimo, the two first sections of your draft Bill do not appear to be called for — In the two last sections Mr. Smyth has suggested some merely verbal alterations.—

4.— Colonel Marshall — 8th November — submits that, "with a view to a clear understanding of Section III of the draft Bill, ~~then~~ ~~with forwarded~~, and in order to bring it in accordance with the wording of the proposition submitted by him and concurred in apparently both by Government and the Advocate General, it appears necessary that the words "intervene (without taking out Letters of Administration) and secure and distribute the assets of," should be substituted

substituted for the words "take Proceedings to obtain Letters of Administration to" and that the words "charging the Estate only with a Commission of Rupees three per centum" be added to the proposed Section".—

5.— The Advocate General sees no objection to the second of these alterations but considers the first not advisable — He does not think it desirable to introduce the anomaly of making the Administrator General, as such, Act without Letters of Administration, or that when in all other cases, he can only act under the authority of the Court, a class of cases should be introduced of which the Court shall have no cognizance. The expense, averaging Rupees 35 is not he thinks a sufficient reason

reason for introducing an anomaly which he thinks the Court would object to and remonstrate against. It would be better he thinks that the Military Secretary should retain these Estates altogether, than that this alteration should be made.

6.— The Madras Government I am instructed to state do not concur in Mr. Smyth's views and would wish the first as well as the second of the Amendments proposed by the Military Secretary to be adopted. It is, I am to observe, according to the course indicated in paras: 4 & 5 of your letter of 17th March last, and according to the practice which, as shown in the officiating Administrator General's letter of 14th March last, now obtains in Bengal.

The expence of obtaining Letters of Administration at Madras (varying from Rupees 33 to 36) may not be as high as at Calcutta but, as shown in the Extract of the Statement annexed to Coll. Marshall's Memo: of 17th June last it bears heavily on Military Estates of small value.—

7.— I am desired to take this opportunity of bringing to your notice that as the law now stands it has been considered by the ~~Advocate General very doubtful whether~~ Govt Law Officers that this Government has no power to appoint any person to act as Administrator General during the absence of the actual incumbent from sickness or other cause— and ~~whether~~ that the Supreme Court would not recognize such officiating Administrator General or Grant him

him Letters.—

8. Consequently on two occasions when the Administrator General has been obliged to leave Madras on account of his health, another Gentleman has been appointed Administrator General absolutely, on the understanding that he would vacate the office on the former incumbent returning, to admit of the latter being re-appointed. Such an arrangement subsists at present, but it seems quite unnecessary.—

9.— The Madras Government would wish advantage to be taken of the present occasion to remedy this defect. They would therefore request you to add to the draft Bill a Section empowering Government to appoint an Acting Administrator General when

in connection

the person ~~the~~ officiating ~~Mem~~ being of course subject to the same conditions and bound by the same responsibilities as the person for whom he acts.

when the real incumbent was on authorized leave of absence.

I have &c:

J.P.

Fort St. George,
20th Dec. 1859.

Sd. Grant
Secretary to Govt.
Legislative Department