

MADRAS RECORD OFFICE.

Government of Madras.

General DEPARTMENT.

G.O. No.	720	Press
	58-59	<u>Mis.</u>
Dated	23-5-1957	

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
from 18th to 27th May 1859.*

No. 58. Read the following letter from C. M. TEED, Esq., Administrator General; to the Chief Secretary to Government, Fort St. George, dated 4th May 1859, No. 480.

I have the honor to acknowledge the receipt of the Extract from the Minutes of Consultation, Judicial Department, No. 505, under date the 13th Ultimo.

I forwarded to Mr. Serle a copy of para. 8 and enclose his reply.

With regard to para. 8, I beg to state, the only means I know open which could finally dispose of the question "Whether or not Mr. Serle is liable to pay Interest on the sums remitted to his Agents for disposal," must be by the parties beneficially interested filing separate Bills in the Supreme Court for taking the accounts of each Estate; or else a Bill in each Estate stating the facts and reasons why Mr. Serle the former Administrator, should be chargeable with Interest. The accounts of each Estate were closed and passed by the Auditors appointed by Government, advertisements for distribution of the assets calling on parties interested were published according to the orders of Government, under which the Administrator General acts. The present Administrator General has not any means to compel the late Administrator General to pay Interest on sums set apart for remittance. I must also

Returned by Mr. Serle.		
Captain J. H. Kays	Ra. 109	3 8
Captain R. Cocke	" 187	11 8
Lieutenant E. Busby	" 136	15 8
Captain McIntosh	" 134	15 6

bring to the notice of Government that four Estates have been since closed and amounts handed to Government under provision of Section LI of Act No. 8 of 1855, the sums in these Estates not amounting to Rupees 500 could not be invested. This remark is also applicable to four other Estates.

The sum of Rupees 29-12-6 deducted, was commission on the accumulation of Interest of Rupees 595-9-8, paid by Mr. Serle in Chester's Estate.

*Supreme Court, Madras,
Registrar's Office, 27th April 1859.*

I have to acknowledge yours of the 21st Instant; I have always stated my readiness to meet any legal demand made against me in respect to my late Office of Administrator General, and if you will furnish me with particulars of the Interest referred to by you (regard being had to those sums which could have been invested) and to any one single instance in which it has been held an Administrator is bound to invest assets set apart for parties interested, I shall be happy to comply with your application. I beg in thus touching on the Law of the case to draw your attention to the great difference existing between an Executor and an Administrator. The former is bound to invest, and there are hundreds of cases to that effect, but I know of no case to the effect an Administrator is so bound, and indeed in support of my view I would appeal to the course of Procedure even now obtaining in your own Office of Administrator General.

In Chester's Estate I paid Interest to purchase peace, as at the time I made that payment I was lying dangerously ill which is well known, but in no way admitting any legal liability to pay the same.

I again repeat my willingness to meet any legal demand against me on being furnished with the particulars and title to the same.

I am, &c.,
(Signed) WILLIAM A. SERLE.

No. 59. ORDER THEREON, 23rd May 1859, No. 720.

The Administrator General was, by Extract Minutes Consultation, 13th April last, para. 8, furnished with a copy of the Advocate General's opinion, recorded thereon, in view to his taking such means as might be open to him for recovering from Mr. Serle, the Interest that might be due by him on account of the eleven Estates, enumerated in the margin, for the period that had intervened between his receiving them back from Messrs. Brundrett & Co., and his making them over to the Administrator General, or from

Captain J. M. Johnston	1,659	8 5
G. Sutton	67	6 9
J. Melcham	532	1 6
Captain J. H. Kays	109	3 8
Lieutenant A. T. Chambers	3,914	9 8
Lieutenant Colonel J. Wissett	736	7 2
Captain R. Cocke	137	11 8
Sir E. Nixon	285	2 0
Lieutenant E. Busby	136	15 8
Captain W. McIntosh	136	15 8
Captain C. H. Warren	376	7 4
Rupees ..	8,092	9 6

July 1853 to June 1856. The Advocate General had stated,—Opinion 14th March 1859, p. 13,—

Opinion 14th March 1859 p. 13. Mar 1859

*Proceedings of the Madras Government, Judicial Department,
from 18th to 27th May 1859.*

that Mr. Serle was clearly liable to pay Interest on these Estates for that period though whether 4 or 5 per cent. was not, he thought, very clear.

2. Mr. Teed states, in reply, that the present Administrator General has no means to compel the late Administrator General to pay Interest on sums set apart for remittance. The only means, he knows of, must be by the parties beneficially interested filing separate Bills in the Supreme Court for taking the account of each Estate, or else a Bill in each Estate, stating the facts and reasons why Mr. Serle the former Administrator should be chargeable with Interest.

G. Sutton...	Rs. 67	6	8
Captain J. H. Kaye...	109	3	8
Captain R. Cocke...	137	11	8
Sir E. Nixon...	285	2	0
Lieutenant E. Bushby...	136	15	8
Captain W. McIntosh...	136	15	8
Captain C. H. Warren...	376	7	4

N. B.—There are only seven Estates. The Estate of Mr. J. Meighan exceeds 500 Rupees and therefore might apparently have been invested. The other Estates are:

Lieutenant A. T. Chambers...	Rs. 3,914	0	8
Captain J. M. Johnston...	1,659	8	6
Lieutenant Colonel J. Wissett...	736	7	2

3. Mr. Teed brings to the notice of Government that the assets of four Estates, out of the eleven, have been since made over to Government, under Section LI, Act VIII of 1855, and that these assets, as well as those of four more, could not have been invested, as not amounting to Rupees 500.

4. In his letter to the Administrator General, 27th April 1859, Mr. Serle professes his readiness to meet any legal demand made against him in respect to his late office of Administrator General. It appears however from the tenor of his letter that he is not prepared to accede to the application for Interest on these Estates unless such demand can be made good in Law, and that he demurs to his legal liability on the ground that as these Estates were assets set apart for parties interested, he was not as Administrator General bound to invest them.

5. The Honorable the Governor in Council observes that the sums in question were returned by Messrs. Brundrett & Co. to Mr. Serle in June 1853, and remained for nearly three years in his hands. That they were in Mr. Serle's possession was only discovered by the present Administrator General on his applying to Messrs. Brundrett to account for the funds. For part of the time that Mr. Serle held these sums he was not even Administrator General and consequently not warranted in holding these sums at all whether with or without investment.

6. The Advocate General has given it as his opinion that Mr. Serle is clearly liable to pay Interest on these Estates for the interval between his receipt of them from his London Agents and their delivery to Mr. Teed, and Mr. Serle has made such payment, not only in the similar case of Chester's Estate, which he quotes, but in that of Hawes' also.

7. Under these circumstances, the Government request that the Administrator General will make a formal demand upon Mr. Serle for Interest at 4 per cent, the rate paid in Chester's Estate, for the Estates of Chambers, Johnston, Wissett and (if the assets in this Estate were above 500 and could have been invested) of Meighan from the date of his receipt of these Estates from Messrs. Brundrett and Co., or July 1853 to 19th June 1856, when they were made over to the present Administrator General, and that he will acquaint Government with the result.

(Signed) T. PYCROFT,
Chief Secretary.

Judicial Department

Proceedings of the Madras Government

*Read the following letter
from the Administrator General.*

[Here enter 4th May 1859 No. 480]

Order thereon 23rd May 1859 No. 720

The Administrator

General was, by Ex. Min. Cons: 13th April last, para 8, furnished with a copy of the Advocate General's opinion, recorded thereon, in view to his taking such means as might be open to him for recovering from Mr. Serle the interest that might be due by him on account of the eleven estates, enumerated in the margin, for the period that had intervened between his receiving them back from Messrs. Brundrett & Co. and his making them over to the Administrator General; or from July 1853 to June 1856. The Advocate General had stated— Opinion 14th March 1859 P. 13. that

Captain J. M. Johnston	1859-8-6
G. Sutton	87-6-9
C. Meighan	532-1-6
Captain J. H. Kaye	109-3-8
Lt. Col. E. Bushby	894-9-8
Lt. Col. J. M. Johnston	736-7-2
Captain R. Cocke	137-4-8
Sir E. Nixon	285-2-0
Lt. Col. Bushby	136-15-8
Captain W. McIntosh	136-15-8
Captain C. H. Warren	376-7-4
<i>P. 8092-9-6</i>	

Mr. Sole was clearly liable to pay interest on these estates for that period. tho' whether 4 or 5 per cent was not, he thought, very clear.

2. Mr. Feed states, in reply that the present Administrator General has no means to compel the late Administrator General to pay interest on sums set apart for remittance. The only means, he knows, ~~there~~ must be by the parties beneficially interested filing separate Bills in the Supreme Court for taking the Account of each estate, or else a Bill in each estate, stating the facts and reasons why Mr. Sole the former Administrator should be chargeable with interest.

3. Mr. Feed brings to the notice of Government that the assets of four estates, out of the eleven, have been since made over to Government, under Sec: 1st Act VIII of 55 - and that these assets, as well as those of four more, could not have been mortgaged, as not amounting to Rs. 500.

Mr. Sutton	Rs 67-6-9
Captain J. H. Nays	189-3-8
Captain R. Cooke	137-11-8
Sir C. A. Nixon	285-2-0
Sir C. B. Buxley	136-18-8
Captain W. H. W. Lush	136-16-8
Captain C. H. Warr	376-7-4

N.B. There are only seven estates. The estate of Mr. J. A. Leigham exceeds 500 Rs. and therefore might apparently have been mortgaged. The other estates are

Lieut. A. F. Chambers	Rs 374-9-8
Captain J. A. Johnston	1689-8-8
Sub. Col. J. W. J. J.	736-7-2

In.

In his letter to the Administrator General 37th April 1859, Mr. Sole professes his readiness to meet any legal demand made against him in respect to his late office of Administrator General. It appears however from the tenor of his letter that he is not prepared to accede to the application for interest on these estates unless such demand can be made good in law, and that he demurs to his legal liability, on the ground that as these estates were assets set apart for parties interested he was not, as Administrator General bound to invest them.

The Honorable the Governor in Council observe that the sums in question were returned by Messrs Brindrett & Co to Mr. Sole in June 1858 and remained for nearly three years in his hands. That they were in Mr. Sole's possession was only discovered by the present Administrator General on his applying to Messrs Brindrett & Co to account for the funds. For

part

how on Mr. Sole going home
in 1855. Mr. Sole is up
point but Administration
funnel / confirmed / on
the understanding that
it would vacate in favor of
Mr. Sole on his return he
July 1855 to Mr. R. C. A.
Directors advise of this
from that they had been
informed by Mr. Sole
that is in his receipt of them from his London
office in returning to his
office to be paid in full
to the office of his
the men has been without
and his vacation of
to office dates therefore
from the time of Mr. Sole's
app. to 30 Jan 1855
Solicitor, Dec 25
July 1855 No 4 Pub. D.
and EMC 30 Jan 1855

part of the time that Mr. Sole
held these sums he was not
even Administrator General
and consequently not warrant-
ed in holding these sums at all
whether with or without invest-
ment.

6. The Advocate General
has given it as his opinion
that Mr. Sole is clearly liable
to pay interest on these estates
for the interval between his
receipt of them from his London
Agents and their delivery to
Mr. Sole and Mr. Sole has made
such payment, not only in the
similar case of Chester's estate
which he quotes, but in that of
Hawes also.

7. Under these circumstan-
ces the Government request
that the Administrator Genl.
will make a formal demand
upon Mr. Sole for interest at
4 per cent. the rate paid in
Chester's estate for the estates
of Chambers, Schuster, and
if the assets in these estates
were above 500 and could
have been invested of Higham
from

from the date of his receipt of
these estates from Mr. Sole
Brundish 16th or July 1853
to 19th June 1856 when they
were made over to the present
Administrator General, and
that he will acquit Gt. with the result.

JP

To the Adm. General - Dispt. 28

Proffers

Medicinal Seltzer & England Hotel 21
June 23rd 1859

Refused to 23rd Oct
2850 of 1859

Pro of 23rd May
Medicinal 1859 Oct 21st

No 22

No. of 1859

21.984
21.984
21.984

4. 11.915

Under circumstances, however,
regarding the administration of
the same, a formal demand upon
the date of interest at 11th for
some of the parties of the same,
between the said and of the
agent in the estate were above
500 and would have been
inserted in the same from
the date of his receipt from
the 11th of the same to 11th and
about the same to 11th

58454