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*Proceedings of the Madras Government, Judicial Department,
from 2nd to 8th July 1859.*

Read the following letters.

No. 53. From J. R. BOYSON, Esq., Government Solicitor, Madras; to the Chief Secretary to Government, dated 28th April 1859, No. 716.

Extract Minutes Consultation, dated 15th April 1859, No. 523. Judicial Department. 1. I have the honor to acknowledge the Extract from Minutes of Consultation noted in the margin.

2. Having ascertained from the Administrator General at Madras, that the expense of his taking out Letters of Administration to an Intestate's Estate in his official capacity is about 35 Rupees. I submitted this information together with the Extract above noted for the consideration of the Advocate General and I have since conferred with him thereon.

I now forward a copy of his opinion.

I have addressed the Administrator General at Bombay requesting him to inform me, what is the expense of his taking out Letters of Administration at Bombay to an Intestate's Estate in his official capacity, and I will have the honor of communicating further with Government as soon as I receive his reply.

No. 54. From J. R. BOYSON, Esq., Government Solicitor, Madras; to the Chief Secretary to Government, dated 4th June 1859, No. 880.

With reference to my letter of the 28th April last, No. 716, I have the honor to report that since the date of that letter I have learned, officially, from the Administrator General of Madras that the expense of his obtaining Letters of Administration, as Administrator General, to an Intestate's Estate varies from thirty-three to thirty-six Rupees, but does not in any way depend upon the amount of assets recoverable.

I have likewise heard from the Administrator General of Bombay that the costs of his obtaining administration to Estates ranging from Rupees 1,000 and under to Rupees 10,000 and upwards, is as follows:—

	Estates under Rupees 1,000.	Estates under Rupees 10,000.	Estates of Rs. 10,000 and upwards.
Administrator General's Fees including Fees of Judge's Clerk, Commissioner and Sealer.....	20	30	40
Ecclesiastical Registrar's Fees.....	23	29	46
Advertising in 3 Newspapers.....	20	20	20
	63	79	106

He adds that in case of additional affidavits, proxy of consent by next of kin, &c., Rupees 4 extra for every such additional exhibit is charged.

COPY OPINION.

Mr. Forbes appears to labor under a misapprehension in para. 3 of his letter of 17th March 1859, given in Extract Minutes Consultation of 15th April, (No. 523, Judicial Department,) as to the comparative expenses of the Administrator General's taking out Letters of Administration at Madras and at Calcutta. He believes them to be higher at Madras than at Calcutta, where the Officiating Administrator General (in his letter, dated 14th March, para. 1,) states them to be about Rupees 100, whereas here at Madras they are only about Rupees 35.

I see no objection whatever to the course suggested by Mr. Peacock and mentioned in paras 4 and 5 of Mr. Forbes' letter; nor I understand does the Administrator General himself.

*Proceedings of the Madras Government, Judicial Department,
from 2nd to 8th July 1859.*

With reference to para. 4 of my letter to the Military Secretary to Government, dated 11th January 1859, I wish to observe that I understand that the Administrator General's objections which I then alluded to arose partly from the circumstance of the Military Secretary never (as I understand) calling on him to administer except in the case of Insolvent Estates, and partly from the circumstance that in one of these cases there were no assets at all, so that he received nothing and moreover had to pay out of his own pocket, Rupees 29 for the costs of administration, which the Military Secretary declined to reimburse him.

That an Officer so situated as the Administrator General is, who acted in that appointment not only without remuneration, but at a positive loss, which notwithstanding his application to be relieved, was never made good to him; and whose commission is so far below the amount at which it was estimated by Lord Harris, Governor, as to have resulted in a loss, in 3 years of about Rupees 6,000, instead of furnishing as estimated an income of Rupees 500 a month, or Rupees 18,000 in the 3 years (making a difference of Rupees 22,000 in that period) that an Officer so situated, should decline troublesome duties, which are not cast upon him by Law, will not perhaps be considered suprising.

April 27th, 1859.

(Signed) T. S. SMYTH,
Advocate General.

(True Copy.)

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

No. 55. Proceedings of Government, Military Department, dated 17th June 1859, No. 2141.
Submits observations on a letter from H. Forbes, Esq., on the subject of administering to Military Estates, limited to Rupees 500, in value. (Vide Proceedings, Military Department, from 11th to 17th June 1859, Nos. 166 @ 168.)

No. 56.

ORDER THEREON, 8th July 1859, No. 935.

Resolved that a copy of the Memorandum from the Military Secretary to Government furnished to the Advocate General for his remarks, in reference to his opinion under date 27th April last.

2. It does not appear to Government why the Act proposed by the Military Secretary para. 2 of his Memorandum, should be confined to insolvent Military Estates. It would seem preferable to extend the operation of the Act in question to all Estates solvent and insolvent, testate or intestate, provided that the Administrator General should not intervene in any *unlawful requisition from the Military Secretary*. This restriction would allow that Officer full discretion as to the Estates to be made over.

3. Mr. Forbes has not adverted to the case of Estates Non-Military, under Rupees 500 value when the Administrator declines to grant Certificate. The Advocate General will be requested to suggest what course should be followed for the disposal of such Estates.

4. Neither has he noticed the point raised by the Advocate General as to the right of creditors under Act VIII, 1859, to administer to the Estates of their debtors, and his attention will be called to the omission.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

MILITARY DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following papers:—

Extract Mins. of Cons. Judicial Department.
Referring a letter from H. Forbes Esq., on the subject of Administering to Military Estates, limited to Rupees 500 in value.

Here enter 15th April 1859, No. 523.

Referred to Estate Department.

21st April 1859.

Memorandum from the Acting Military Secretary to Government, 17th June 1859.

With reference to Extract Minutes of Consultation No. 523, of the 15th April 1859, in the Judicial Department, the Acting Military Secretary to Government has the honor to observe, that the measure proposed by Mr. Forbes appears objectionable, with reference to Section LXI of the Mutiny Act—the effect of the proposition apparently being to require, that all such Estates, whether testate or intestate, solvent or insolvent, should be accounted for to the Administrator

General, whether desired by the Military Secretary or otherwise—thereby entailing needless expense and delay, upon a class who can very ill afford it—the proposition is also apparently opposed to the objects contemplated by Sections LXI to LXV of the Mutiny Act.

The object in view could apparently be better attained by the introduction of a short Act,

“Rendering it obligatory on the Administrator General, to intervene, (without taking out letters of Administration) for the securing and distributing of the Assets of such insolvent Military Estates (whether intestate or otherwise) as are below 500 Rupees, on the requisition of the Military Secretary to Government only”—charging the Estate with a Commission of Rupees 3 per cent”—being the amount chargeable on Certificates granted to parties interested in Estates falling below 500 Rupees in value, and annulling any portions of Act VIII of 1855; which may interfere with this arrangement.

* * * * *
“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.”
* Dated 14th March 1859, No. 481, Paras. 1st and 2nd.

This course appears in accordance with the opinion of the Advocate General, Mr. Smith, as expressed in the last Para of his letter of the 11th January 1859.—

It appears also to be in accordance with existing practice in Bengal, as per letter* from the Officiating Administrator General of Calcutta to Mr. Forbes.

By the above course, Military Estates would suffer no other loss, than that of the Administrator General's Commission—and neither the functions of the Military Secretary, nor the terms of the Mutiny Act would apparently be interfered with. The Administrator General would have no complaint on the score of non-payment of his Fees—and the loss to the Creditors would be trivial, compared with what they now incur, in being kept for years together, without an adjustment of their claims.

Should the above proposition not be approved, the difficulty may probably be met by a short Act,

“Declaring that the Administrator General shall, subject to the requisition of the Military Secretary, be considered the legal representative of a deceased Military man, whenever his Estate (whether testate or intestate) is insolvent only—and may not exceed 500 Rupees in value.”

The difference between the two propositions, is—that by the first, the remuneration of the Administrator General will be provided for, subjecting the Creditors to only a very trifling loss—while by the second, the Administrator General will be left in his present position, the amount of his per-centage, being saved to the Creditors.

By the annexed Extract of Statement of Military Estates, falling below 500 Rupees, shewing the total Assets received, and the charges incurred for each on account of Administration charges &c., it will be observed, that on an average, about one-fourth of the whole Assets are expended on Law charges only.

Extract from the Statement of Military Estates administered to, by the Administrator General of Madras, during the years 1853 to 1855 inclusive.

Estate of	1			2			3			4			5			6		
	Total of Assets received by Administrator General			Total of Administration charges including Commission			All other charges connected with Administration			Total charges for Administration			Date of receipt of Assets			Date of Distributing of Assets		
Brown, E. Ag. Staff Serjeant—Comst. Dept.....	164	4	3	45	15	5	24	10	0	66	9	5	1854	Decr. ...	7th	1856	January ..	4th
Beaumont, H. J. Lt. 7th Regt. M. N. I.	405	8	2	61	6	3	2	14	6	64	4	9	1855	May ...	18th	Accounts not yet closed.		
Cassarley, J. E. Serjt. Euro. Arty. Vn. Compy.....	124	14	7	40	15	2	20	15	0	61	14	2	1853	& Novr...	3rd	1854	July.....	15th
Firminger, J. W. Asst. Surgeon 19th M. N. I.	240	0	3	39	11	11	9	2	2	48	14	1	1855	August...	26th	Accounts not yet closed.		
Roper, E. D. Capt. 2nd N. Vn. Battn.	418	9	9	55	4	11	19	3	8	74	8	7	1853	August...	7th	1854	May...	20th
Simpson, G. Capt. 22nd Regt. M. N. I.	224	12	9	39	5	11	2	8	0	41	13	11	1855	April. ...	18th	Accounts not yet closed.		
Tomes, E. Lt., 2nd N. Vn. Battn.	313	15	5	49	7	2	26	8	4	75	15	6	1854	August...	13th	1855	October ...	4th
Tulloch, C. W. Capt. 1st Madras Fus.	183	15	6	37	15	7	4	4	6	42	4	1	1855	Saptr.....	9th	Accounts not yet closed.		
Total Rupees...	2076	0	8	366	2	4	110	2	2	476	4	6	1855	May	18th			

ORDER, No. 2141, 17th June 1859.
Ordered that the foregoing Memo from the Estate Department, be communicated to the Judicial Department.
(True Extract.)

To the Judicial Department.
" Estate Department.
Acting Secretary to Government.

Exd. J. Davis.

Memorandum

de General

Administrator General not obliged to administer, nor grant Certificates under Act VIII 1855 in the case of military estates under 500 Rupees. but may do if he chooses.

Application to be made to Legislative Council to amend act. also to declare what are the rights of creditors to administer to the estates of their debtors. and how all estates under Rs. 500 are to be dealt with when Administrator General will not administer or give Certificate.

Administrator General must apply for letters in all cases above Rs. 500. Creditor cannot take out administration in these but only, if at all, in estates of a lower value.

Member

Member Legislative Council

Proposes a short Act
to declare that the Administrator
General shall be considered
the legal representative of a
Military man, ^{whose} estate may
not exceed Rs 500, and in
such cases Administrator
without taking out letters.

Says nothing about
Civil estates.

From letter of Adminis-
trator General Calcutta it
seems that these letters of
Administration are not usually
taken out in case of estates
under Rs 500 as expense of
such letters is about Rs 100.

But Administrator ^{never}
refuses to intervene in
estates under Rs 500 Civil or
military, without taking out
letters, and grant Certificates
or by himself collecting and
distributing assets, charging
commission only, and making
small costs.

In case of any small
estates at a great distance
Administrator

Administrator General will
sometimes authorize any
seemingly trusted other per-
son to dispose of estate and
has advised Railway Officials
to do so in case of Railway
servants having estates under
Rs 300 applying for instruction
when estate is about Rs 300.

No instances of creditors
having received certificate but
no reason why he should not.

Government Solicitor

Cost of taking out letters
at Madras to intestate estate
about 35 Rs. at Bombay about
63 Rs. in estates under Rs 1000.

Advocate General

Sees no objection to
course proposed by Mr Forbes
and by Mr Pascoe. Understands
that Administrator General
has declined to administer
to Military estates under 500 Rs
because those sent him by
Military Secretaries have always
been insolvent.

Military Secretary

Objects that by Mr Forbes
plan

plan the Administrator Genl.
would act (as representative)
in all cases of estates under
Rs 500. testate or intestate.
solvent or insolvent. whether
Military Secretary desired
it or not.

proposes an Act.

Obliging Administrator
General to secure and dis-
tribute Assets in insolvent
estates under Rs 500. testate or
intestate on receipt of Commis-
sion of 3 per cent on being
required so to do by Milly Secy.
(Why not any estates on
requisition of Military Secretary.
solvent or insolvent?)

Or that Administrator Genl.
on requisition of Military Secy.
be considered legal representa-
tive of estate of Military Secy.
if insolvent and under Rs 500, in
this second case the Administra-
tor General would not get Com-
mission.

Amended Statement showing
cost of administering and
legal expenses incurred in estates
under Rs 500-

57M
Judicial Department

Proceedings of the Madras Government

Read the following Papers.

From the Government Solicitor - Here enter 28th April and 4th June
1859 Nos 716 & 880.

Pro: of the Milly. Department - " - " 17th June - No 2141

Order thereon 8 July 1859. No 935.

Resolved that a copy
of the memo from the Milly.
Secretary to Government be
furnished to the Advocate
General for his remarks, in
reference to his opinion under
date 27th April last.

2. It does not appear
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proposed by the Military
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should be confined to insolvent
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solvent, testate or intestate
provided

provided that the Administra-
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sition from the Military
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would allow that Officer full
discretion as to the estates to
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the point raised by the Adv-
ocate General as to the right
of Creditors under Act VIII-
1859 to administer to the estates
of their debtors, and his at-
tention will be called to the
omission.

JP

To the Advocate General
"Military Depart." } *with copy of the Memo*
18/10/1859 } *Drifted 9th*
M. Marechal

Drifted 9th

Letter 18th Janry. 1859 P. 5.

10 Jan 1859

23 3-60

8 3-4

15-4-59

58-80

8-2-59

33-34

19-4-59