M.R.O. 1—30,000—16-10-22.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 665 Press ~~Mis.~~

218–219

Dated. 28.4.1862 ~~Mr~~ .

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Not to be folded or roughly handled

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Proceedings of the Madras Government, Judicial Department, 28th April 1862.

No. 218. Read the following letter from T. SYDNEY SMYTH, Esq., Advocate General; to the Honorable T. PYCROFT, Chief Secretary to Government, Fort Saint George, dated 12th April 1862.

I have the honor to submit the following Report for the information of His Excellency the Governor in Council in a matter connected with the Administrator General's Department, and in order to submit for His Excellency's consideration and decision the suggestions hereinafter mentioned.

2. Lieutenant Chambers of the Madras Army, deceased in 1825, left upwards of Rupees 30,000, and a Will with 3 Codicils, the last of which cancelled all preceding dispositions and bequests; and, *inter alia*, bequeathed a certain interest in Rupees 7,000 each to his Native concubine and his three illegitimate children; one of whom, Henrietta, on the 12th October 1833, married one George William Gaynor, received the interest of Rupees 7,000 during her life, and died intestate on the 26th August 1850.

3. The Administrator General, it appears, had obtained Letters of Administration to Chambers' Estate, and possessed himself of the Rupees 28,000 bequeathed to the concubine and illegitimate children above mentioned.

4. Mr. Gaynor, on the 20th March 1862, obtained Letters of Administration to his deceased wife's Estate, and applied to the present Administrator General for Rupees 7,000 as due to him in right of his wife; alleging it was her absolute property under her father's Will; and in proof thereof alleging that the Books of the late Administrator General shewed that he had actually paid away the other 3 shares of Rupees 7,000 to the concubine and the two other children.

5. Mr. Miller, the present Administrator General, replied that he had no knowledge of the grounds of these payments; and that he knew nothing to warrant their payment; and believed that such payments must have been made erroneously; as he was of opinion that the only interest which the said four Legatees took under the 3rd Codicil was only a *life* Estate each in the annual *interest* of Rupees 7,000, with a power of appointment by Will as to the principal; in default whereof, the principal must fall into the *residue* of the Testator's Estate, which the Will bequeathed to his mother, sister, and brothers.

6. Henrietta Gaynor's Legacy had, it appears, been remitted to England after her death, in order to be paid to the Residuary Legatees; but, it seems, they could not be found, and the money was remitted back to Madras, and Rupees 4,377-14-8 replaced to the credit of Chambers' Estate, and subsequently paid into the Government Treasury, under Section LI of Act VIII of 1855 where it now is, and amounts to Rupees 5,149-11-8.

7. Mr. Gaynor petitioned the Supreme Court, under Section LII, giving notice to me on behalf of Government, and also to the Administrator General.

8. The Court, after hearing Counsel, decided that the petition could not be granted; but that, as it was a proper legal question to be brought before the Court, and more especially as the other three Legatees had, it was sworn, been each paid the principal of their respective shares, they thought the Petitioner ought not to be ordered to pay costs.

9. I then applied for costs out of the Fund, as did the Administrator General. The Court intimated that if the Fund was in the Administrator General's hands, it was a proper case for payment of those costs out of the Fund—but, on being informed that the Fund was in the Treasury, said, that as the Fund was neither in Court, nor in the Administrator General's hands, the Court though having every disposition to order costs to be paid out of the Fund, considering it a very proper case for such an order, did not see that it had any power to make such an order upon a Fund in the Government Treasury.

10. On further consideration I am of opinion that the Court was right. As however the costs in question were incurred in protecting the Fund, and as the Court distinctly intimated that it was a proper case for the Fund to bear the costs, and that it would have made an order to that

effect had the Fund been within it's reach, I trust His Excellency will consider it a proper case for complying with the Court's opinion, and authorize the payment of the necessary amount from the balance of this Legacy now in the Treasury. If such applications are not strenuously resisted, Funds situated like the present one may be entirely swept away by parties who really have no legal title thereto.

No. 219. ORDER THEREON, 28th April 1862, No. 665.

The Government sanction the payment, out of the amount transferred to Government in Lieutenant Chambers' Estate, of the costs incurred by the Advocate General and the Administrator General in the matter of Mr. Gaynor's Petition to the Supreme Court.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

April 12/62

Mr Gaynor

Certainly not the Gaynor's costs — only the others.

Yours truly
Spencer Smyth

No. 665 – 28 April 1862

The Govt. sanction the payment, out of the amount transferred to Govt. in Lieut. Chambers Estate, of the costs incurred by the Advocate General & the Administrator General in the matter of Mr. Gaynor's Petition to the Supreme Court.

The Accl. Genl. Madras.
" Bank Madras.
" Govt. Solicitor.
" Administrator Genl.

Desp. 28th