

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1005	Press
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250-251		
Dated	26.6.1963	~~11~~

8/9

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
26th June 1863.*

No. 250. Read the following letter from A. MACDONALD RITCHIE, Esq., Registrar High Court, Original side; to the Chief Secretary to Government, Fort Saint George, dated Madras, 9th May 1863.

I am directed by the Chief Justice to acknowledge the receipt of the Proceedings of the Madras Government, dated 28th April 1863, and to inform you in reply to the request of His Excellency the Governor in Council that no new precautions have been adopted in the High Court to provide for the security of official Trusts.

The Chief Justice has had the matter under consideration with Sir Adam Bittleston and it has seemed to them that the only really effectual precaution that could be adopted would be to require the Official Trustee to give security for the due execution of the Trusts either by the deposit of Government Promissory Notes to a considerable amount, or by the Bonds of approved sureties as well as his own; but the Act XVII of 1843, gives the Court no authority to call upon the Official Trustee for any such security.

The Act recites that there is peculiar risk in India to trust Estates not only from the insolvency of Trustees, but from death, absence or refusal or incapacity to act; and by way of remedy, in cases where there are no Trustees within the jurisdiction of the Supreme Court willing to act or capable of acting, authorizes the Court, upon the application of the parties interested in the property, to appoint some Officer of the Court as their Trustee. Thus an Officer of the Court is, at the request of the parties, substituted for a private Trustee; and as the property thereupon rests in him and his successors in office, they get the advantage of having as their Trustee a person filling a responsible situation and of good character, and also are relieved from all the difficulties arising from death, absence or refusal or incapacity to act.

There is no provision, such as there is in the Administrator General's Act, requiring the Officer to give security; and the Judges have considered the intention to be, that he should be on the same footing as a private Trustee. Parties applying for his appointment, do so with full knowledge that no security is taken from him; and they may at any time, upon application to the Court, procure the re-transfer of the property to other Trustees. Both the original selection of the Officer as a Trustee and his continuance in the Trust are in truth entirely the acts of the parties interested.

The third section authorizes the Court to make orders respecting the property (which is required to be invested in Government Securities), or the interest thereof; but that section has reference to orders in each Trust respecting the distribution and payment out, or other disposal, of the funds to or amongst the parties entitled.

Since the passing of Act VIII of 1855, the Administrator General may be appointed Official Trustee in any case in which the parties desire it; but even if this should be done, it has been thought very doubtful whether his sureties would be responsible for any property held by him only as Official Trustee.

These are the reasons why no steps have been taken in this matter by the Chief Justice and Sir Adam Bittleston, and are probably the reasons which influenced their predecessors also.

The Chief Justice has, however, communicated to me the desire of the Judges that the Official Trustee should open an account as Official Trustee with the Bank of Madras, and should pay in to the credit of that account all cash balances and at the same time deposit all Government Securities held in that capacity and should furnish half yearly to the Judges a statement of that account vouched by the Bank of Madras, and of the number and amount of the Government Securities in hand; and in respect of the funds I hold as Official Trustee that request will be at once complied with.

No. 251.

ORDER THEREON, 26th June 1863, No. 1,005.

His Excellency the Governor in Council does not consider that the arrangement described in the last paragraph of the foregoing letter affords a sufficient security for the Estates under the charge of Official Trustees. The Chief Justice has communicated to the Registrar the desire of the Judges that he should open an account as Official Trustee with the Bank of Madras, and

Proceedings of the Madras Government, Judicial Department,
26th June 1863.

should pay into the credit of that account all cash balances, and at the same time deposit all Government Securities held in that capacity, and should furnish half yearly to the Judges a statement of that account vouched by the Bank of Madras, and of the number and amount of the Government Securities in hand; and Mr. Ritchie states that the request thus made will be at once complied with. It does not however follow that this arrangement which is not ordered but is treated as a request, will be carried out by all Official Trustees—and, if it is a mere statement of the Cash and Securities actually in the Bank of Madras, is not enough unless it be shown that these are all that ought to be there which can only be established by a regular audit.

2. The Honorable the Judges will be requested to state whether it is not in their power to order that all official Trust accounts shall be audited like those of the Administrator General half yearly, either by the Commissioner or some other Officer of the Court, or by a professional Accountant, the expense of the audit being charged in the latter case to the Trusts under audit.

3. If the present Law, Act XVII of 1843, does not vest in the Court the power of ordering such a system, the Judges will be good enough to inform Government in what manner it should be amended in order that a representation may be made on the subject to the Supreme Government for the consideration of the Council of the Governor General.

(Signed) J. D. SIM,
Secretary to Government.

It does not appear to me that course of procedure indicated in the last part of this letter, although an improvement upon the present practice, for the Judges.

The Judges merely demand a regular audit and a regular statement. Ritchie says that he will comply with the request, I do not follow that all other official Trustees will.

And if they do a mere statement of the Cash and Securities, actually in the Bank of Madras is not enough, unless it be shown that these are all that ought to be there, and this can only be established by an regular audit.

The Judges might be asked when they could not cause all official Trust accounts to be audited like those of the Administrator General half yearly, either by

The Commission or some other Officer
of the Court or by some person in
account and - the expense of the
and being in the latter case charge
the Trusts under audit -
The persons assigned by the
Judges for their report to look after
the Trusts properties seem to me
to be wholly insufficient - that an
Official Trustee is in loco of a per-
-sonal Trustee - and that both the
original selection of the former Officer
and his continuance in the Trust
are entirely the acts of the parties
interested and surely we should
be able to get a better of all
in position - The parties interested

by a series of age & experience ³
-infants - from Comorles or similar
superiorly and such & VI. of the
Act X VII. 1843 - ^{are often} - ^{in a} variable
to enter from, and the authority
which appoints the official Trustee
might surely be expected to see
that he fulfills the purpose of
his appointment -
Act X VII. 1843

If the present law does not
vest in the Court adequate power
of control, the Judges should be
expected to it in ⁱⁿ fact - which
manner it should be amended -
and if they do not seem disposed
to take up the matter heartily, we
might address a bill of Justice on

Security for the Estates under
the charge of Official Trustees.
The Chief Justice has com-
municated to the Registrar
the desire of the Judges
that he should open
an

JP

Notwithstanding any alteration of a
 Act shown probably to be made
 in Council of the for full and
 shown at the time. Received
 - from the -
 to have - J.P.

Nov 28th 1863 / 62 214-205
 Nov 1st 1863. at 85 & 20.
 - 28th Feb - Oct 60.
 Act 28th of 1843 - Act 10th of 1855.
 To be of state at 14 of 1863.

Ind. 1863 Sept
 No. 1001

From
 The Registrar
 High Court - Outside
 19th 12th 1863
 No. 1001

States, in reference
 to the order of Court: 8/28.
 Also, that no new precau-
 tions have been adopted
 in the High Court to provide
 for the security of official
 trusts for persons given
 Sincere in the minute
 of Mr. Pycroft and that
 it should be acted upon
 by the subject before
 Council and

Resolved
 by

C. J. L. L.
 R. 6-11

Indl. Department.

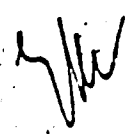
PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following
letter from the Registrar of
the High Court.
(Here enter 9th May 1863)

Order thereon 26 June 1863 No. 1005-

His Excellency the
Governor in Council does not
consider that the arrange-
ment described in the last
paragraph of the foregoing
letter affords a sufficient
security for the estates under
the charge of Official Trustees.
The Chief Justice has com-
municated to the Registrar
the desire of the Judges
that he should open






an account as Official
Trustee with the Bank
of Madras, and should
pay into the credit
of that account all cash
balances and at the
same time deposit all
Government Securities held
in that capacity and
should furnish half
yearly to the Judges a
Statement of that account
vouched by the Bank
of Madras, and of the
number and amount
of the Government Securities
in hand and Mr Pritchard
states that the request
thus made will be at
once complied with.
It does not however follow
that this arrangement
which is not ordered,
but is treated as a request
will

will be carried out by all
Official Trustees. And,
if it is a mere Statement
of the Cash and Securities
actually in the Bank
of Madras, is not enough
unless it be shown that
these are all that ought
to be there which can only
be established by a regular
Audit.

2 The Honble the Judges
will be requested to state
whether it is not in their
power to order that all
Official Trust accounts
shall be audited like those
of the Administrator General
half yearly, either by the
Commissioners or some other
officer of the Court, or by a
professional Accountant,
the expense of the Audit
being charged in the latter
case to the Trusts under
Audit.

3 If the present law
act ~~XVII~~ of 1843 does not
rest in the Comt the
power of ordering such a
system the judges will
be good enough to inform
Government in what manner
it should be amended
in order that a representa-
tion may be made on the
subject to the Supreme
Government for the con-
sideration of the Council
of the Governor General.

W

To the Honble the Judges of the
High Court. Sep 27th

17.12.23 U

Pro. Fine

Receival 1863. Department.

No. 1005.

PROCEEDINGS OF GOVERNMENT,

Dated 25. June 1863.

CH. 1664.

The arrangements made
for the security of official
travels not being considered
satisfactory, inquiring members
the judges of the High Court,
whether it is not in their
power to make a half-yearly
audit of all such travels.

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