M.R.O. 1—39,000—16-10-23.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1465 Press ~~Mis.~~

86-87

Dated 10-9-1863 ~~15~~ .

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Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
10th September 1863.

No. 86. Read the following letter from JOHN ROBERT BOYSON, Esq., Government Solicitor, Madras; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Madras, 18th July 1863, No. 499.

1. With reference to the concluding part of my letter to Government of the 1st instant, No. 442, I have the honor to state that I submitted the two questions therein adverted to for the consideration of the Advocate General and subsequently conferred with him thereon, and I now forward a copy of his opinion.

2. I am now calling upon the Acting Administrator General (and as such the Administrator of the late Mr. Teed's Estate) to make good the gross amount of Messrs. Williamson & Co's. overdue and unpaid account's sales by passing the proper proportions to the credit of the respective Estates to which they are due, and I will, as soon as possible, report the result to Government.

COPY OPINION.

1. I learn that the claim against Messrs. Ashton Richardson & Co., for Rupees 182-2-0 has been adjusted. It is unnecessary therefore to remark on that matter.

2. I think Mr. Teed's Estate clearly liable for the defalcation of his Agents Messrs. Williamson & Co. of the sum of Rupees 1,082-2-8, and the necessary legal steps should be forthwith taken for recovering that amount.

3. I think the Administrator General perfectly justified in recouping himself out of Mr. Brass' Estate in respect of the defalcations of the latter. The Administrator General could not have obtained Letters of Administration without the consent of Mr. Brass' widow and next of kin. It is well known that the family assented to the Administrator General taking out Letters of Administration for the express purpose of enabling him to save himself as far as possible from the heavy injury inflicted on him by the deceased.

4. If any one is to question the propriety of the Administrator General's acts in this respect, it appears to me that it is a question for the family or creditors of the deceased, not for the Government.

5. I can see no distinction between the case of the Administrator General and any other Administrator. And the law is clear that an Administrator has a right to retain the Intestates Estate for the payment of his own debt, as against all creditors of an equal degree. Of course if there are creditors of Mr. Brass superior in degree to the Administrator General who is only a simple contract creditor, they must be paid in priority to his claim.

6. The only possible question that could arise is whether the Administrator General's claim is a *debt.*

7. Now I cannot conceive a clearer case of one man owing another money, than that of the former stealing, embezzling, or fraudulently appropriating the other's cash. And in the recent case of *Chowne versus Baylis* (XI W. Reports p. 5) which was heard in July last, the Master of the Rolls expressly laid this down.

8. The only observation I have to make on this subject is that I consider the Administrator General to have been perfectly justified in the course he took for saving himself, as far as he legally could, from the heavy pecuniary loss entailed upon him by the act of his clerk Mr. Brass.

(Signed) JOHN BRUCE NORTON,
Advocate General.

MADRAS, 16*th July* 1863.

(True Copy.)

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

No. 87. ORDER THEREON, 10th September 1863, No. 1,465.

To be recorded.

(Signed) A. J. ARBUTHNOT,
Chief Secretary.

Exd. T. McMootry.

Judicial 1863 Departmt
Pro Ltr
From The Govt Solr Madras
To The Chief Secy to Govt

Dated 18th July
Recd 20 "
No 499.
1 Encle
No 1584

Oct 26/63

Forwards Copy Advocate Generals opinion as to the recovery from the late Mr Seeds Estate of the balance due from Messrs Williamson & Co to the Administrator General in respect of Account Sales of effects entrusted to them by Mr Seed for Sale and as to the Right of the Administrator General of Madras, as the Administrator to the Estate of the late Mr Thomas Brass deceased, to apply the assets of Mr Brass' Estate towards this defalcation.

No 1465 of 10 Sept 1863.

Recorded

List of papers sent

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