M.R.O. 1—30,000—16-10-23.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1534 Press ~~Mis.~~

200-201

Dated 23-9-1863. ~~19~~ .

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Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
23*rd September* 1863.

No. 200. Read the following letter from THOMAS WILKINS, Esq., Deputy Registrar of the High Court of Judicature at Madras; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Madras, 4th September 1863, No. 96.

In reply to the Orders of Government, dated the 10th July last, No. 1,114, forwarding two Bills received with a letter from the Under Secretary to the Government of India, dated the previous 16th June, for the opinion of the Honorable the Judges of the High Court, I am directed to transmit the accompanying observations recorded by the Honorable the Chief Justice and the Judges on the provisions of the Bills in question.

Remarks of the Honorable Mr. Justice Holloway.

"A Bill to consolidate and amend the Law relating to the conveyance and transfer of property in British India vested in Mortgagees and Trustees, in cases to which English law is applicable."

The Act is based upon Sir G. Turner's Act and that of 1852, which amended it. The latter Act removed all the doubts which existed upon the former. I am not aware that any difficulties have occurred in carrying out the provisions.

I would substitute for the words "out of the jurisdiction of the High Court," wherever they occur, "out of the ordinary original Civil jurisdiction of the High Court." It may be of great consequence to the parties interested to appoint a new Trustee where one of those appointed is not so resident.

I cannot see the use of Section XLI. It is copied from the now obsolete Clause of the English Act authorising a reference to the Master. This Act and the Charter of the High Court give to the Chief Justice the power of delegating such business to one or more Judges of the Court. I can see no benefit in a further delegation. If the order required to be an order of the whole Court, there would be meaning in it, but the Judges to whom the authority is so delegated, are, for the purposes of this Act, the High Court.

In Section XI the words "in trust" should be inserted; they are not in the corresponding English Section, but it is obviously awkward to have to gather by implication that the estate is a Trust estate.

Remarks of the Honorable Mr. Justice Phillips, and the Honorable Mr. Justice Frere.

I have no observations to offer on this Bill.

Remarks of the Honorable Sir Adam Bittleston.

These provisions have been found very useful in England, and I see no objection to their introduction here. What Mr. Justice Holloway points out as to the use of the words "out of the jurisdiction of the High Court" requires attention certainly, for those words leave it ambiguous *what* jurisdiction is meant. In Section 3 reference is made to the limits of the ordinary original Civil jurisdiction, and also to the limits of the extraordinary Civil jurisdiction, which of course are widely different; and the Sections in which the action of the Court is to depend upon parties being "out of the jurisdiction" ought to specify *what limits* are intended. The limits should be, I think, those of the ordinary original Civil jurisdiction, considering how vast are the distances included within the other limits; and that the Court may in its discretion refuse any unnecessary application.

Section XLI ought, with reference to the arrangements in the Madras High Court and the number of the Judges, to give power to refer the investigation of facts to the Commissioner, when necessary.

Remarks of the Honorable the Chief Justice.

I think it desirable that the High Court should possess the powers contained in this Bill, and I approve generally of its provisions. Adverting to the Clauses mentioning "the jurisdiction of the Court," I think it would be well in terms to express whether the limits of both the ordinary and extraordinary jurisdiction are meant; or only the former. And in Clause 41, to meet the constitution of the Court here, provisions should be made for a reference to the proper office appointed for that purpose.

I would be well to substitute the words "out of the ordinary Civil jurisdiction of the High Court" for the words "of the jurisdiction of the High Court", wherever they occur.

As regards the Bill for constituting the office of Official Trustee, the Governor in Council thinks it very desirable that effect should be given to the suggestion made by the Chief Justice and Sir A. Bittleston for making the new Act applicable to existing Trusts.

W. R. Morgan
23 December 1863

As regards Mr. Justice Holloway's observations on this Clause, I would point out that there is still need for the provision. It has reference to the Court *actually* engaged in the *hearing* of a suit, and is to enable such Court to refer to a single Judge a matter which otherwise the Court itself would be bound to hear and decide, perhaps less efficiently and at much greater expense.

Remarks of the Honorable Mr. Justice Frere.

In providing for security to be given by the Official Trustee, and in other respects, this Bill appears to me far preferable to the old Law Act, No. XVII of 1843, and I think it very desirable that it should pass into law.

"A Bill to constitute an office of Official Trustee."

Remarks of the Honorable Mr. Justice Phillips.

This draft Act appears to me to supply the many notorious deficiencies of the present law, and will, it is to be hoped, prevent a repetition of what many persons are said to have suffered from.

Remarks of the Honorable the Chief Justice and the Honorable Sir Adam Bittleston.

This Bill is a great improvement on Act XVII of 1843; but its completeness is marred by excepting from its operation existing Trusts under that Act. There is some difficulty no doubt in providing for the immediate transfer of estates vested in an Official Trustee under the old Act to the new Officer without the consent of the parties beneficially interested; but recent occurrences in our Court are sufficient to show that it is very desirable that estates should not remain in the hands of any Officer who is not under any obligation to give security for the faithful execution of the Trust, nor subject to any regular audit; and in my opinion a provision should be introduced to the effect that after public notice by advertisement or otherwise, and reasonable time given to the parties interested to object, the Court should, if no objection be made, direct the transfer of the Trust estates vested in any Officer under Act XVII of 1843, to the new Officer.

Act XVII of 1843 was extended to the Straits Settlement by Act XIV of 1852; but there is no provision in this Bill for the appointment of an Official Trustee in that settlement, nor is Act XVII kept alive as to the Straits. This omission should be remedied.

No. 201. To the Secretary to the Government of India, Home Department, dated Fort Saint George, 23rd September 1863, No. 1,534.

In acknowledging the receipt of Mr. Under Secretary Wyllie's letter of the 16th June last, forwarding copies of the two Bills noted in the margin for the opinion of the Honorable the Judges of the High Court at Madras, I am directed by the Governor in Council to submit, for the consideration of the Honorable the President in Council, the annexed copy of a letter from the Deputy Registrar of the High Court, under date the 4th instant, forwarding the opinion of the Judges on the Bills in question.

A Bill to "consolidate and amend the law relating to the conveyance and transfer of property in British India vested in Mortgagees and Trustees in cases to which English law is applicable."
A Bill "to constitute an office of Official Trustee."

2. The Governor in Council concurs with Sir Adam Bittleston and Mr. Justice Holloway, that in the first of the two Bills it would be well to substitute the words "out of the ordinary Civil jurisdiction of the High Court" for the words "out of the jurisdiction of the High Court," wherever they occur.

3. As regards the Bill for constituting the office of Official Trustee, the Governor in Council thinks it very desirable that effect should be given to the suggestion made by the Chief Justice and Sir Adam Bittleston for making the new Act applicable to existing Trusts.

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

Rxd. T. McMoorty.

dispd. 29

To

No. 1534. Judicial Department.

The Secretary to the Government of India.

Home Department.

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No. Sept.

Judicial 1863 Departt.

№ 1534

To

The Secy. to the Govt
of India
Home Deptt

Dated 23d September 1863

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