

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1580	Press
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Dated	1. 10. 1863	112

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Not to be folded or roughly handled

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Proceedings of the Madras Government, Judicial Department,
1st October 1863.

No. 3. Read the following letter from JOHN ROBERT BOYSON, Esq., Government Solicitor, Madras; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Madras, dated Madras, 26th September 1863, No. 721.

1. With reference to the Order of Government noted in the margin, I have the honor to report that I have failed to obtain any information, beyond that contained in Mr. James Richardson's Memorial to the Secretary of State,

Dated 13th July 1863, No. 1,128, Judicial Department.

which has any important bearing on the subject of Mr. Richardson's application to Government.

2. At the time the Order of Government reached me, I was under the impression that some years previously I had seen (in the performance of my duty either public or private) a settlement or other Deed which recited the facts and circumstances of Mr. Serle's connection with Dr. Stokes' estate, or in some way related to it, and I, therefore, communicated with Mr. James Richardson with a view to obtaining information on this point as well as on the subject generally.

3. Mr. James Richardson assured me that the only Deed (such as I mentioned) which I could possibly have seen was the conveyance of "Jarrett's Gardens" at Egmore, which were purchased with a portion of the funds to which his wife was entitled under Dr. Stokes' Will; that this conveyance with all other Deeds relating to the property had been mislaid; and that, although careful search and inquiry had been made for them, they could not be found. I recommended renewed inquiries in the offices of the Registrar and the Administrator General and from other sources where information was likely to be obtained, considering it desirable that I should satisfy myself as to the effect of the missing Deed (or rather as to the recitals contained in it) by a reference to the Deed itself. Mr. James Richardson acted upon my advice, and the result was that the missing Deeds were ultimately found in the custody of Mr. A. M. Ritchie, the present Registrar of the High Court. I thereupon attended and perused these Deeds; but found that they threw no additional light on the subject and in no way affected the present question, beyond showing that Mr. Serle had professed to act (and in fact acted) as a Trustee appointed by Dr. Stokes in the codicil to his Will.

4. I have no reason to doubt the general accuracy of the statements contained in Mr. James Richardson's Memorial, and, with the opinion I hold, it does not seem to me necessary that I should attempt by any more elaborate inquiry to verify the minutiae of them.

5. I am clearly of opinion that Mr. James Richardson (in right of his wife) has no legal or equitable claim whatever upon the Crown. I think that Mr. Serle must be looked upon as an ordinary testamentary Trustee appointed by Dr. Stokes himself by the codicil to his Will, and just as if Dr. Stokes had by his codicil appointed "W. A. Serle of Madras" to be such Trustee. I think also that the words in the codicil "according to an Act in the Legislative Department, dated 25th November 1842, Fort William, and published in the Fort Saint George Gazette, Madras, December 13th, 1842," must be treated as so much surplusage, or as mere matter of description.

6. Dr. Stokes was evidently mistaken not only as to the intentions but also as to the legal effect and operation of Act XVII of 1843. Had he sought legal advice, his very serious misconception would at once have been pointed out to him, and he might possibly, under such circumstances, have made other arrangements. This however does not, in my opinion, give Mr. James Richardson (in right of his wife) any moral claim upon the Crown for relief at the public expense from the consequences of Mr. Serle's fraud.

7. I would here remark that Mr. James Richardson is inaccurate in paragraph 2 of his Memorial, where he says "the late Mr. W. A. Serle, in his official capacity of Registrar of the Supreme Court, took charge of all monies belonging to the Estate of Surgeon Stokes," &c., the fact being that Mr. Serle did not take charge of the monies in question "in his official capacity of Registrar of the Supreme Court," but as a Trustee named by Dr. Stokes himself, in the codicil to his Will, and in the same manner as any ordinary testamentary Trustee appointed merely by name, would have done.

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8. There is, in my opinion, a most important difference between the present case of malversation by Mr. Serle (in what seems to me his capacity of an ordinary testamentary Trustee) and similar malversation in cases where he was appointed by the late Supreme Court to be an Official Trustee under the provision of Act XVII of 1843, and that any suggested or supposed moral claim on the consideration or liberality of the Crown, which sufferers in the last mentioned class of cases may possibly put forward, upon the ground of such Official Trustee not having been required by the Supreme Court to give sufficient security, or to pass and vouch his accounts, before competent authority, cannot be applied to the case of Mr. James Richardson.

9. Such being my views, it only remains for me to add that, in my opinion, Mr. James Richardson has not made out such a case as (even upon his own showing) entitles him to any relief at the hands of the Crown and at the public expense for the consequences of his wife's father having unfortunately appointed a Trustee, who was not deserving of his confidence.

No. 4. ORDER THEREON, 1st October 1863, No. 1,580.
Before transmitting Mr. Dill

Before transmitting Mr. Richardson's Memorial to the Secretary of State, the Governor in Council would wish to be informed whether the Advocate General concurs in the opinion expressed in the foregoing letter.

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

N^o 1580 of 1st October 1883.

Before transmitting his Richmond
memorial to the Secretary of
State the former in Council
wrote with it to be forwarded
to the Advocate
General and in the
opinion expressed in
the foregoing letter.

GR

To the Govt. Solicitor ^{at} Dept. 10 Oct 68.

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Exd. T. McMootry.