M.R. O. 1—32,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No.	1810	Press / Mis.
179-181. Dated	15-12-	19 1864

4/5

Not to be folded or roughly handled

Read the following papers :—

No. 179. From Mr. G. W. GAYNOR ; to the Chief Secretary to Government, Fort Saint George, dated Madras, 24th November 1864.

I beg to enclose a petition and its annexures to the Honorable the Governor in Council, and will thank you to be kind enough to lay the same before His Excellency in Council at the next Council meeting, and communicate to me the result thereof.

To the Honorable the Governor in Council,
Fort Saint George.

The humble Memorial of GEORGE WILLIAM GAYNOR, of Madras, inhabitant, residing at No. 96 in Bazaar street at Choolay within the limits of Madras.

Sheweth,

Auriol Thomas Chambers, late a Lieutenant in the Madras Army, died at Cannanore on or about the 16th July 1825, leaving a Will, dated 15th May 1811, and thereby bequeathed certain legacies, and appointed his father George Chambers, and his brothers Fredrick James Milbank Chambers and Augustus Chambers and Charles Munday, Esq., Executors thereof. A copy of this Will is hereunto annexed and marked A.

2. The said A. T. Chambers made a Codicil to his said Will, dated 11th January 1819, and thereby appointed other Executors in addition to those appointed in the said Will. A copy of this Codicil is also hereunto annexed and marked B.

3. The said A. T. Chambers made another Codicil to his said Will, dated 25th June 1823, and thereby appointed the Registrar of the Supreme Court, Madras, for the time being, and his (the said A. T. Chambers') brother F. J. M. Chambers sole Executors. A copy of this Codicil is also hereunto annexed and marked C.

4. The said A. T. Chambers made another Codicil to his said Will, dated 15th September 1823, without in any manner revoking the appointment of Executors contained in the Codicil of the 25th June 1823.

5. At the time of the death of the said A. T. Chambers he left him surviving two sons and one daughter, named respectively Thomas, and Gilbert, and Henrietta, and their mother Race Baie.

6. Letters of Administration (with the said Will and Codicils annexed) were granted to the Administrator General of Madras, and he possessed himself of all the assets belonging to the estate of the said A. T. Chambers, deceased, including the 28,000 Rupees mentioned in the 3rd Codicil of the said Will.

7. Henrietta Chambers, the daughter of the said A. T. Chambers, deceased was, on the 21th October 1833, married to your Memorialist, and afterwards drew the interest payable to her, from time to time as it accrued due, from the Administrator General of Madras.

8. The said Henrietta Gaynor, formerly Henrietta Chambers, died on the 26th August 1850 intestate, leaving your Memorialist, her husband, surviving.

9. On the 20th March 1862, Letters of Administration to the estate and effects of the said Henrietta Gaynor, deceased, were granted to your Memorialist as her husband.

10. It appears from the books of the said Administrator General that the three sums of Rupees 7000 each, the interest of which was by the said 3rd Codicil bequeathed to the other children of the said A. T. Chambers, deceased, and to their mother with power of alienation of the capital or corpus by Will, has been paid to them or their representatives as an absolute legacy to them.

11. The principal or corpus of the sum of 7000 Rupees, the interest of which was by the said 3rd Codicil bequeathed to the said Henrietta for life with power of alienation by Will, was on her

death remitted to England by the Administrator General of Madras to the residuary legatees in the said 3rd Codicil mentioned, and was returned to the Administrator General with a statement that neither the residuary legatees or their representatives could be found, and thereupon the sum of Rupees 4377, Annas 14, and Pice 8, was replaced to the credit of the estate of the said A. T. Chambers in the books of the said Administrator General, and was subsequently by him paid into the Government Treasury under the provisions of Section 51, Act VIII of 1855.

12. On the grant of the Letters of Administration to your Memorialist to the estate of his deceased wife, the said Henrietta Gaynor, he (as such Administrator as aforesaid) applied to the Administrator General of Madras, and as such the Administrator of the estate of the said A. T. Chambers, deceased, to draw from the said Treasury and to pay to your Memorialist the said sum of 5619 Rupees, 11 Annas, and 8 Pice, and thereupon the Administrator General refused to comply with such application, and contended that the gift to the said Henrietta in and by the said 3rd Codicil was a life interest only in and to the interest of the said sum of Rupees 7000, and that inasmuch as she had died intestate and without in any way having exercised the power of appointment granted to her in and by the said Codicil, the principal or corpus of the said sum of Rupees 7000, the interest of which was specially bequeathed to her, on her death, fell into and formed part of the residue of the estate of the said A. T. Chambers and passed to the other legatees mentioned in the residuary clause in the 3rd Codicil.

13. Your Memorialist on the other hand contended that the clear intention of the said testator, the said A. T. Chambers, as gathered from the whole Will and Codicils, in giving to Henrietta the interest of the said sum of Rupees 7000 for life, with an absolute power of alienation by Will, there being no limitation over the principal or corpus, and in stating that his intention was, in case of her marrying, that the above bequest to her should be without the reach or control of her husband, amounted to a bequest to her of an interest in the whole sum and out of a power to bequeath it only and passed an absolute right in the whole sum to her separate use, and that at her death it was a chose in action vested in her and did not fall into the residue of the said A. T. Chamber's estate mentioned in the residuary clause of his Will, but passed to your Memorialist as her husband and administrator.

14. On the 7th April 1862 your Memorialist filed a petition in the late Supreme Court at Madras, setting forth the above facts and prayed that the Secretary of State in Council for India, and the Aministrator General of Madras, and as such the Administrator of the said estate of the said A. T. Chambers, deceased, might be ordered to pay the said sum of 5619 Rupees, 11 Annas and 8 Pice, being the amount of the legacy then in the hands of the said Secretary of State in Council for India, to your Memorialist.

15. The matter of the petition came on to be heard before the said Supreme Court on the 10th April 1862, and after due investigation the Court refused your Memorialist's application.

16. Your Memorialist has been informed that the funds comprising the legacy and the interest which have accrued due thereon, have been paid by the Administrator General of Madras to the Government of Madras for the Crown.

17. Your Memorialist prays that the matter may be referred to the Advocate General of Madras for his report in the premises, and that the amount of the legacy and interest accrued due thereon, may be paid to your Memorialist as representing the husband and administrator of the estate of Henrietta, the natural daughter of the said A. T. Chambers, deceased.

And your Memorialist, as in duty bound, shall ever pray.

MADRAS, *24th November* 1864.

(Signed) G. W. GAYNOR.

Referred for the opinion of the Advocate General.

FORT SAINT GEORGE,
29th November 1864.

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

Proceedings of the Madras Government, Judicial Department,
15th December 1864.

No. 180. From J. R. BOYSON, Government Solicitor, Madras; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Madras, 6th December 1864, No. 628.

I have the honor to acknowledge the Order of Government noted in the margin, (with its enclosures), requesting the Advocate General's opinion as to whether Mr. G. W. Gaynor's petition to Government for payment to him, as the administrator of his wife's estate, of a legacy bequeathed to her by the Will of the late Lieutenant A. T. Chambers, deceased, should or should not be complied with.

Dated 29th November 1864, and made on letter from Mr. Gaynor to Government of 24th idem.

2. I submitted the matter, together with the papers relating to the proceedings taken by Mr. Gaynor in the late Supreme Court in 1862, for the purpose of obtaining payment of the fund in question, for the consideration of the Advocate General, and have also conferred with him on the subject; and,

3. I now forward a copy of his Opinion, and return the Order and enclosures above noted.

COPY—OPINION.

I have perused Mr. Gaynor's petition and the papers forwarded with it.

2. I can see no ground for complying with his prayer.

3. His case was fully heard before the Supreme Court, when I appeared in support of his contention. The Judges after full argument heard, decided on the 10th April 1862, that the late Mrs. Gaynor had only a life estate in the interest of the principal fund of 7000 Rupees, with a power of willing away the corpus. As she did not exercise that power, it follows that Mr. Gaynor's present request is that the Government should hand over to him property to which he has no legal, equitable or moral right, and which in fact and law belongs to the persons entitled to the residue, into which it has fallen, should they ever turn up.

4. As administrator to his wife's estate Mr. Gaynor can have no claim. Her interest ceased with her life; and it was in the capacity of administrator to his wife that he made the application to the Supreme Court, which was refused.

5. I am clearly of opinion that the Government should reply that they cannot, after having taken the opinion of their Law officers, comply with Mr. Gaynor's request.

3rd December 1864.

(Signed) J. B. NORTON,
Advocate General.

(True Copy.)

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

No. 181. ORDER THEREON, 15th December 1864, No. 1810.

The Government, having taken the opinion of their Law Officer in the matter referred to in the foregoing petition, cannot comply with the petitioner's application.

(True Extract.)

Chief Secretary.

To Mr. G. W. Gaynor, with copies of Lieut. Chambers' Will, &c., returned.

Exd. J. Tulloch.

Judicial Department

Proceedings of the Madras Government

Read the following papers:-

Letter from Mr G.N. Gaynor — Here Enter 24th Novr 1864

Letter from the Govt Solicitor — Dr — 6th Decr 1864 No 628.

Order thereon 15th December 1864 No 180

The Government having taken the opinion of their Law Officer in the matter referred to in the foregoing Petition, cannot comply with the Petitioner's application. —

To Mr G.N. Gaynor.

Judicial 1864 Departt.

No 1810.

Proceedings of Govt

Dated 15 Decr 1861.

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