M.R.O. 1—88,000—16-10-23.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1345 Press ~~Mis.~~

200-202.

Dated 20. 9. 1865

d/s

Not to be folded or roughly handled

Read the following papers:—

No. 210. From Mrs. M. FITZGERALD, of Madras, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Madras, 30th June 1865.

May I beg the favor of your laying the enclosed Memorial before His Excellency the Governor and the Honorable the Members of Council, with a request that the same may be forwarded by the Madras Government to the Right Honorable the Secretary of State for India in Council, with their recommendation and liberal support.

To

THE RIGHT HONORABLE SIR CHARLES WOOD, BART., K. C. B.,
And one of Her Majesty's Most Honorable Privy Councillors, and
Secretary of State for India in Council.

The humble petition of MARGARET FITZGERALD, of Madras, married woman, the wife of JAMES FITZGERALD, late a Clerk in the service of the Madras Government, but now a pensioner residing at No. 9, in Kennet's Road, at Egmore, within the local limits of Madras,

HUMBLY SHEWETH,

That your petitioner has been very greatly aggrieved by the acts of the late William Ambrose Serle, Esq., late Registrar of the late Supreme Court of Judicature at Madras, and, as such, Official Trustee; and, in consequence of the said W. A. Serle's Estate being almost insolvent, is left without any substantial remedy.

That from the circumstances which your Excellency will find detailed in this petition, your petitioner and her family have been suddenly reduced from a position of comparative affluence to almost beggary, by the conduct of a public official, over whose acts your petitioner had no knowledge, and whose appointment was sanctioned and countenanced by the highest tribunal in the land.

That by the Decree of the Honorable the late Supreme Court made on the 16th day of May 1845, in a suit wherein your petitioner, by George Taylor, her next friend, was Complainant, and George Arbuthnot, William McTaggart, Alexander Mackenzie, James Strachan, John Younge Fullerton, James Fitzgerald (your petitioner's husband abovenamed), John Alves Arbuthnot, Patrick VansAgnew, John Fraser, and Charles William Blunt (now Sir Charles William Blunt, Baronet), when they, the said John Alves Arbuthnot, Patrick VansAgnew, John Fraser, and Charles William Blunt, should come within the jurisdiction of the said Court, were defendants, it was amongst other things referred to the Master of the said Court to appoint a Trustee or Trustees in the room of the said Patrick VansAgnew, John Alves Arbuthnot, and John Fraser, the then Trustees of an Indenture of Marriage Settlement executed before, and in contemplation of, the marriage of your petitioner with the said James Fitzgerald, dated 11th May 1821, in the pleadings of the said cause mentioned, and to which said Deed your petitioner therein craved leave to refer as part of her said bill, and it was amongst other things ordered that the said George Arbuthnot, William McTaggart, Alexander Mackenzie, and James Strachan, should, out of the Trust Funds of such Marriage Settlement, pay the costs of the several parties to the said suit, and assign and transfer the residue to such new Trustee or Trustees to be appointed by the said Master upon the Trusts of the said Indenture of Settlement, dated the said 11th day of May 1821, and the said Court decreed amongst other things that the Plaintiff was entitled to receive, during the lifetime of the said James Fitzgerald, or until the further order of the said Court, one-half of the interest or annual proceeds of the said Trust monies remaining after payment of such costs as aforesaid, and that the said Charles William Blunt, Esq., then the common Assignee of the Court for the Relief of Insolvent Debtors at Madras, and, as such, then

the Assignee of the Estate and Effects of the said James Fitzgerald, or his duly consituted Attorney, John Younge Fullerton, was entitled to receive the other half of the said interest or annual proceeds of the said Trust monies during the life-time of the said James Fitzgerald, or until the further order of the said Court.

That the Master of the said Court, by his report made in such suit, dated on or about the 18th day of August 1845, found that the said William Ambrose Serle, who was official Trustee, was a fit and proper person to be appointed a Trustee in the room of the said Patrick VansAgnew, John Alves Arbuthnot, and John Fraser, the then Trustees, of the said Indenture of Settlement, dated the 11th day of May 1821, and appointed the said W. A. Serle to be such Trustee, in the room of the said Patrick VansAgnew, John Alves Arbuthnot, and John Fraser.

That the said W. A. Serle accepted such appointment, and a Deed was thereupon executed by the said W. A. Serle, and all other necessary parties, appointing the said W. A. Serle such new Trustee, and assigning over all such Trust Funds to him, and the said W. A. Serle thereupon entered upon the execution of such said Trust, and received possession of the said Trust Funds, which were invested in Government securities, and amounted to Rupees 24,097-8-0, or thereabouts.

That the said W. A. Serle, Esq., died on the 23rd day of December 1860, having previously thereto made his Will, dated the 10th day of the said month of December, whereby he appointed Mrs. Helen Mary Serle the sole Executrix thereof; and the said Helen Mary Serle, his widow, after his death, and on the 27th day of the said month of December, renounced Probate in favor of the Administrator General of Madras, who, on the 9th day of February 1861, obtained Letters of Administration with the said Will annexed to the Estate of the said W. A. Serle, and has possessed himself of the assets of the said deceased and of the said Deed in the last paragraphs mentioned.

That the said W. A. Serle, in his life-time, and without the knowledge or consent of your petitioner, negociated all the said Government securities in which the said Trust funds stood invested, and applied the proceeds thereof to his own use.

That such wrongful appropriation of such Trust monies was discovered by your petitioner for the first time, subsequently to the death of the said W. A. Serle.

That a considerable portion of the moiety of the interest of such Trust funds directed by the said Decree to be paid to your petitioner was in arrear, and unpaid by the said W. A. Serle to your petitioner at the time of his death.

That Benjamin Brooks, Esquire, is now the Official Assignee of the said Insolvent Court, and, as such, the Assignee of the said James Fitzgerald, and entitled to the other moiety of the interest of the said Trust Funds during the life of the said James Fitzgerald, on whose death the whole of the said interest is, by the said Indenture of Marriage Settlement, payable to your Petitioner for her life.

On the 6th day of May 1861, your petitioner exhibited her bill on the Equity side of the late Supreme Court, in a suit wherein your petitioner, by J. C. Fitzgerald, her son and next friend, was plaintiff, and the said Administrator General, as Administrator with Will annexed of the said W. A. Serle and another was defendant, which said bill embodied all the above facts and circumstances, and prayed amongst other things as follows:—That an account might be taken of such Trust Funds and interest come to the hands of the said W. A. Serle, as such Trustee as aforesaid, and of his application thereof; that a new Trustee or new Trustees might be appointed of such Marriage Settlement in the place and stead of the said W. A. Serle; that the balance due by the said W. A. Serle to your petitioner for arrears of her moiety of the interest of the said Trust funds might be decreed to be paid to her from and out of the Estate of the said deceased; that the Estate of the said W. A. Serle might be decreed liable to make good the full amount of the said Trust Funds so taken possession of by the said W. A. Serle, as in the bill mentioned; that such amount, when ascertained, be decreed to be paid by the Estate of the said W. A. Serle to the credit of such suit, subject to the further order of the said late Supreme Court; that the Estate of the said W. A. Serle might also be decreed liable to pay to your petitioner her costs of such suit; that if the defendant, the Administrator General, should admit assets of the said W. A. Serle sufficient to make the payments aforesaid, then that he might be decreed to pay the same respectively; that if

the defendant, the Administrator General, should not so admit assets, then that an account might be taken of the Estate of the said W. A. Serle, and that such Estate might be admininistered under the direction and decree of the said Court; that the aforesaid claim, in respect of the said breach of trust, might be declared to be a specialty claim, and, as such, entitled to satisfaction in preference to all the simple contract creditors of the said W. A. Serle; and, lastly, that your petitioner might have such further and other relief in the premises as to the Honorable Judges of the said Court should seem meet, and the nature of the case might require.

Charles Martin Teed, Esq., the then Administrator General, on the 10th day of June 1861, filed his answer to the said Bill, and the said suit came on for hearing on the 26th day of July 1861, when the said Court decreed that it be referred to the Master of the said Court to take an account of the Trust Funds in the Bill in this cause mentioned, and of the interest thereon, come to the hands and possession of W. A. Serle, Esq., the testator, in the pleadings in the said cause named as the Trustee appointed by the report of the Master of the said Court, dated the 18th day of August 1845, made in the cause wherein your petitioner, by George Taylor, her next friend, was plaintiff, and George Arbuthnot, and others were defendants, in the room of Patrick VansAgnew, John Alves Arbuthnot, and John Fraser, the then Trustees of the Indenture of Marriage Settlement of your petitioner, with James Fitzgerald, dated the 11th day of May 1821, and in the said Bill, in the said cause particularly mentioned, and of the said testator W. A. Serle's application thereof, and what part or parts thereof, had come to the hands of the defendant, the Administrator General of Madras, as his Administrator, with Will annexed, since his death, or to the hands of any other person or persons by his order or for his use, and that, for the better taking of the said account and discovery of the matters aforesaid, the parties were to produce before the said Master, upon oath, all Deeds, Books, Papers and Writings in their custody or power relating thereto, and were to be examined upon interrogatories or *vivâ voce*, or both, as the said Master should direct, and that it be referred to the said Master to appoint a new Trustee or new Trustees of such Marriage Settlement aforesaid, in the place and stead of the said Testator, W. A. Serle, and that the balance for arrears of your petitioner's moiety of interest of the said Trust Funds due by the said testator, W. A. Serle, to your petitioner be paid by the said defendant, the Administrator General, to your petitioner, or to Mr. James Thompson, her Solicitor, from and out of the Estate of the said testator then in his hands, and that the Estate of the said testator, W. A. Serle, was liable to make good the full amount of the said Trust Funds aforesaid so taken possession of by him as aforesaid, and that the amount thereof, when so ascertained by the said Master, should be also paid by the said defendant, the Administrator General, from and out of such Estate of the said Testator, W. A. Serle, deceased, into the Treasury of Fort Saint George, with the privity of the Accountant General of the Honorable the late Supreme Court, to the credit of such cause, subject to the further order of the said Court, and that the Sub-Treasurer of Fort Saint George, with the privity of the said Accountant General, should invest such amount, when so paid in by the said defendant, the Administrator General, as such Administrator of the said Testator, W. A. Serle, as aforesaid, in one or more security or securities of the Government of India, and carry such security or securities to the credit of such cause to an account to be entitled, "The Account of the Trustees of the Marriage Settlement of Mrs. Margaret Fitzgerald," subject to the further order of the said Court, and that it be referred to the said Master to tax your petitioner her costs of such suit, and that such costs when so taxed as aforesaid should be paid by the said defendant, the Administrator General, to your petitioner, or to Mr. James Thompson, her Solicitor, from and out of the Estate of the said W. A. Serle, and that, if upon the taking of the said account therein before directed, the said defendant, the Administrator General, should not admit sufficient assets of the said Testator, W. A. Serle, to make the payments aforesaid, then that it be referred to the said Master to take an account of the Estate and effects, both real and personal, of the said W. A. Serle, deceased, come to the hands of the said defendant, the Administrator General, as his Administrator, or to the hands of any other person by his order or for his use, and the said Court by such Decree declared that your petitioner's claim in respect of the breach of trust of the said Testator, W. A. Serle, was a specialty claim, and, as such, entitled to satisfaction in preference to all other simple contract creditors of the said Testator, W. A. Serle.

That on the 26th day of April 1861, Ghirderdoss Govindoss, a creditor of the said W. A. Serle, filed his Bill in the said late Supreme Court for the Administration of the said Estate of the said W. A. Serle against A. M. Ritchie, Esq., the then Administrator General.

That on the 31st day of May 1861, the said Court decreed as follows, viz: That it be referred to the Master of the said Honorable Court to take an account of what is due to the plaintiff in respect of his debt and all other the creditors of William Ambrose Serle, Esq., the testator in the pleadings mentioned, and of his funeral and testamentary expenses, and to compute interest on such of the debts that carried interest after the rate the same respectively carried interest, and the said Master was to cause an advertisement to be published in the *Fort Saint George Gazette*, and such other public papers as he should think fit, for the creditors of the said testator to come in before him and prove their debts, and he was to fix a peremptory day for that purpose, and in default of their coming in to prove their debts by the time so to be appointed they were all to be excluded the benefit of such Decree; but the persons so coming in to prove their debts, not parties to this suit, were, before they were to be admitted creditors, to contribute to the plaintiff their proportion of the expense of their suit to be settled by the Master, and the said Court did order that the said Master should take an account of the personal estate of the said testator come to the hands of the said defendant, his Administrator, or to the hands of any other person by his order or for his use, and it was ordered that the said testator's personal estate be applied in payment of his debts and funeral and testamentary expenses in a due course of administration, and for the better taking of such accounts and discovery of the matters aforesaid, the parties were to produce before the said Master, upon oath, all Deeds, Books, and Papers in their custody or power relating thereto, and were to be examined upon interrogatories or *vivâ voce* as the said Master should direct, who, in taking the said accounts, was to make unto the parties all just allowances, and the said Court did order that the said Master should make his report on the matters above referred to him within two months from the date of the service of such Decree on him, with power to the said Master for special cause to enlarge the time so specified as aforesaid, and the said Court did reserve the consideration of all further directions and of the costs of such suit until and after the said Master should have made his report.

That, as directed and provided for in and by the said last-mentioned Decree, your petitioner took in her state of facts and charge through her Solicitor, a copy of which state of facts and charge is annexed to this her petition by way of schedule, and is marked A., to which your petitioner humbly craves your Excellency's attention.

That on the 14th day of December 1861, the Master of the said Supreme Court allowed your petitioner's charge against the said Estate.

The said W. A. Serle died on the 24th December 1860.

				Rs.	A.	P.
The amount of Company's Bonds of the four per cent. loan placed in trust with the said W. A. Serle was				24,097	8	0
Interest due on the above amount at the time of the said W. A. Serle's death:						
For the half-year in 1860	481	15	1			
For the full years 1861, 1862, 1863, 1864	3,855	8	8			
For the half-year in 1865	481	15	1			
				4,819	6	10
Total				28,916	14	10

That to the best of your petitioner's information and belief, the costs of the several legal proceedings which the creditors of the deceased have been driven to incur will of themselves form an important item of charge, and must, pursuant to the said Decrees, be first paid out of the Estate.

Such costs will it is presumed, exceed what the Estate is now found to consist of, and your petitioner, though she has adopted every possible expedient in her power to recover some portion of her just dues, of which she and her family have been so wrongfully deprived by circumstances over which she had no possible control, has reason to expect that she will recover nothing from the Estate of the said W. A. Serle.

Proceedings of the Madras Government, Judicial Department,
20th September 1865.

Your petitioner humbly asks, whether the condition to which she is now reduced having been forced upon her by the act of the highest tribunal in the land in appointing an Official without requiring security from him, your Honorable Government will permit her and her family to suffer for the wrongful act of a servant of your Government, and she humbly refers your Excellency and Her Most Gracious Majesty's Government of India in Council, to the late case of Captain Francis, wherein, by reason of the petitioner there having been deprived of his just rights by the said W. A. Serle as such Official Trustee, the said Government was graciously pleased to direct an inquiry into the circumstances, and subsequently out of the State coffers administered adequate compensation.

Your petitioner has hitherto refrained from addressing your Excellency and the said Government, because she considered it her duty to try every available course for recovery of her money against the Estate of the said W. A. Serle, but having heard that the said Estate of the said W. A. Serle was and is in effect Insolvent, she has been driven to appeal to the mercy of a liberal and just Government.

Under these circumstances, your petitioner most humbly prays your Excellency's and the said Government's gracious consideration of her case, and a direction that an inquiry be instituted into the circumstances of your petitioner's case, and that compensation be made out of the coffers of the State to your petitioner in respect of the monies of which she has so been unfortunately deprived, and your petitioner humbly hopes that the steps she has taken to save the State by using every effort to recover her money from the Estate of the said W. A. Serle may weigh with your Excellency in your kind consideration of her case, and induce you and Her Most Gracious Majesty's Government to deal liberally by her, for which act of grace your petitioner, as in duty bound,

will ever pray.

Madras, 30*th June* 1865. (Signed) M. FITZGERALD.

A

IN THE SUPREME COURT OF JUDICATURE AT MADRAS.

IN EQUITY.

Between

GIRDER DOSS GOVIN DOSS, a Soucar, on behalf of himself and all other the unsatisfied Creditors of WILLIAM AMBROSE SERLE, Esq., late of Madras, who shall come in, and contribute to, the expenses of this suit, *Plaintiff*,

And

ARTHUR MACDONALD RITCHIE, Esq., Administrator General of Madras, and, as such, the Administrator of the Estate and Effects of the said WILLIAM AMBROSE SERLE, Esquire, deceased, *Defendant*.

The State of Facts and Charge of Margaret Fitzgerald, *a married Woman, residing at No. 9, Kennet's Road, Egmore, within the limits of Madras, by* James Conrade Fitzgerald, *of Madras, Manager of the Presidency District Engineer's Office, residing at No. 9, Kennet's Road, Egmore, aforesaid, her Son and next Friend.*

That, by the Decree of this Honorable Court, made in the cause wherein the said Margaret Fitzgerald, by the said James Conrade Fitzgerald, her son and next friend, was, and is, plaintiff, and the Administrator General of Madras, and, as such, the Administrator, with Will annexed, of the

abovenamed William Ambrose Serle, Esquire, late the Registrar of this Honorable Court, deceased, and Benjamin Brooks, Esquire, Official Assignee, and, as such, the Assignee of James Fitzgerald, the husband of the said Margaret Fitzgerald, were and are defendants, and dated the twenty-sixth day of July 1861 (and to which the said Margaret Fitzgerald, craves leave to refer as part of this her charge), it is refered to the Master of this Honorable Court to take an account (amongst other things) of the Trust Funds in the Bill mentioned and of the interest thereon come to the hands of the said William Ambrose Serle, as Trustee as therein mentioned, and of the said William Ambrose Serle's application thereof.

That it is by the said decree further referred to the said Master to tax the said Margaret Fitzgerald her costs of her said suit, and that such costs when so taxed be paid by the Administrator General of Madras to the said Margaret Fitzgerald, or her Solicitor, from and out of the Estate of the said William Ambrose Serle.

That the said decree declares that the said Margaret Fitzgerald's claim, in respect of the Breach of Trust of the said William Ambrose Serle therein mentioned, to be a specialty claim, and, as such, entitled to satisfaction in preference to all other simple contract creditors to the said William Ambrose Serle.

That by an order of this Honorable Court, dated the twenty-third day of October, one thousand eight hundred and sixty-one, and made in the said cause wherein the said Margaret Fitzgerald, by her said next friend was and is Plaintiff, and the said Administrator General of Madras, and Benjamin Brooks, Esquire, were and are defendants, it was ordered that an Injunction be awarded to restrain the said Margaret Fitzgerald, her Solicitor, and Agents, from taking any proceedings to enforce the payment of the sum of Rupees one thousand two hundred and twenty-three, and Annas ten, being the amount of the said Margaret Fitzgerald's taxed costs in her said cause.

That the said William Ambrose Serle, as such trustee as aforesaid, received the several Trust Securities and monies in the Schedule hereto annexed and marked A, mentioned, and amounting to Rupees twenty-four thousand nine hundred and fifty-eight, Annas fifteen, and Pice nine.

That the said William Ambrose Serle, in breach of the Trust reposed in him, applied all such Trust Securities and monies to his own use.

That the said Margaret Fitzgerald has received no satisfaction or security in respect of such securities and monies save her said Decree.

The said Margaret Fitzgerald charges that she is, under the said Decree of the said Twenty-sixth day of July one thousand eight hundred and sixty-one, a specialty Creditor of the said William Ambrose Serle, in respect of the matters aforesaid, to the extent of the sum of Rupees twenty-four thousand nine hundred and fifty-eight, Annas fifteen, and Pice nine, and subsequent interest on the securities and principal monies in the said Schedule A, hereto mentioned, from the first day of August one thousand eight hundred and sixty till payment. And she claims to be at liberty to add, to alter, or amend this, her state of Facts and Charge, as she may be advised.

This is the Schedule A, hereinbefore referred to!

PROMISSORY NOTES OF THE GOVERNMENT OF INDIA.

				Rs.	A.	P.	Rs.	A.	P.
No. 13,433	in favor of J. G. H. Brown, Esq., dated 1st February 1843, of the 4 per cent. loan, for...		...	1,000	0	0			
„ 13,434	do.	do.	.....	1,000	0	0			
„ 13,435	do.	do.	.....	1,000	0	0			
„ 13,436	do.	do.	.....	1,000	0	0			
„ 13,437	do.	do.	.....	1,000	0	0			
„ 13,438	do.	do.	.....	1,000	0	0			
„ 13,439	do.	do.	.....	1,000	0	0			
„ 13,440	do.	do.	.....	1,000	0	0			

No. 5,252	in favor of Sir R. R. Arbuthnot, Bart.,	do.	.....	1,500	0	0			
„ 5,253	do.	do.	.....	1,500	0	0			
„ 7,702	do.	do.	.....	2,000	0	0			
„ 7,703	do.	do.	.....	2,000	0	0			
„ 7704	do.		do. ...	2,000	0	0			
„ 2207	in favor of Lieut. Col. Sheffington Poole		do. ...	5,000	0	0			
„ 535 of 171 of 1834 of 35	in favor of W. A. Serle, Esq., of Tanjore debt.		... ...	1,500	0	0			
„ 1920	one Government Promissory Note...		... ...	500	0	0			
	Promissory Notes of Government of India, making together the sum of.		... ...	24,000	0	0			
	Cash in the hands of W. A. Serle, Esq.		... ...				2,233	15	9
The following is an account of the unpaid interest on the said Promissory Notes of the Government of India, due by the Estate of the said W. A. Serle, to Benjamin Brooks, Esq., as the Official Assignee of the Estate and Effects of the abovenamed James Fitzgerald :—									
To a moiety of the half year's interest on the Promissory Notes of the Government of India, in the year 1857...			...	240	0	0			
To one year's interest in 1859, on	do.	do.	...	480	0	0			
							720	0	0
Total amount of the said Trust Funds and the unpaid interest thereon received by W. A. Serle, Esq., is...			...				24,953	15	9
To interest on the said sum of Rupees 24,238-15-9, at 5 per cent. per annum, from the 1st of August 1860 to the day of 186 .			... ...						
Mrs. Fitzgerald's costs of, and incident to, proving this her State of Facts and Charge...			... ...						
			Rupees...						

Referred to the Government Solicitor, for early report as to the correctness of the statement made in the enclosed Memorial in regard to the amount due to Mrs. M. Fitzgerald by the Estate of the late Mr. Serle, for monies which come into his possession in his capacity of official Trustee.

FORT SAINT GEORGE,
31*st July* 1865.

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

No. 211. From J. R. BOYSON, Esq., Government Solicitor, Madras, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Madras, 2nd September 1865, No. 509.

Referring to the Order of Government noted in the margin, I have the honor to report, for the information of Government, that I have inspected the accounts kept by the late Mr. William Ambrose Serle, as official Trustee, in connection with Mr. and Mrs. Fitzgerald's trust, and find that on the 7th of October 1845, Mr. Serle received from Messrs. Rowlandson and Rose, on account of the Trust, a Government Promissory Note for Sicca Rupees 22,000 and Rupees 1224-10-1 in cash, that on the 8th of the same month he invested Rupees 528-11-7, part of the last-mentioned sum of cash, in the purchase

Dated 31st July 1865, and made on letter from Mrs. M. Fitzgerald to Government, of 30th June 1865.

of a Government Promissory Note for Company's Rupees 500; that on the 9th idem he paid 1 Rupee for renewal fee; that on the 3rd of August 1853, he sold the Government Promissory Note for Sicca Rupees 22,000 for Company's Rupees 23,713-1-10; that on the 5th August 1853, he invested Company's Rupees 22,009-12-5, part of such sale proceeds as aforesaid, in the purchase of 14 Government securities for the nominal aggregate amount of Rupees 22,000; that on the 4th of November 1853, he purchased another Government Promissory Note for Company's Rupees 1500 for Rupees 1500-10-8; that he (Mr. Serle) realized interest in respect of the Promissory Note for Rupees 1500 up to the 31st of October 1859, and in respect of the Promissory Note for Company's Rupees 500 and of the 14 Promissory Notes for the aggregate amount of Company Rupees 22,000, up to the 1st of February 1860; that out of the funds in his hands belonging to the Trust, including the interest from time to time realized by him on the Government securities in which such funds were from time to time invested, Mr. Serle paid various sums to Mrs. Fitzgerald, amounting in the aggregate to Rupees 8148-2-0, and to the Official Assignee, as representing the insolvent estate of Mr. Fitzgerald, sums amounting in the aggregate to Rupees 7106-11-6; and that on the 26th of October 1860, the date of Mr. Serle's last payment to the Official Assignee, there were at the credit of the Trust account, one Government Promissory Note, bearing interest at 4 per cent. per annum from the 31st of October 1859, for Rupees 1500, and 15 Government Promissory Notes, bearing interest at the like rate from the 1st of February 1860, for the aggregate amount of Rupees 22,500, besides a cash balance of Rupees 1101-13-9. I herewith send a Memorandum shewing the position of the Trust Funds and securities, and the mode in which they have been dealt with, as gathered from Mr. Serle's Books, as official Trustee. As regards amounts, this Memorandum does not quite agree with the data embodied in Mrs. Fitzgerald's petition; my Memorandum giving Rupees 24,000 as the aggregate amount of the Government Securities, whilst Mrs. Fitzgerald, in her petition, states the same aggregate to be Rupees 24,097-8-9. How the difference of Rupees 97-8-0 arises, I am unable to conjecture. Again Mrs. Fitzgerald in her petition states the half-yearly interest of the Trust Funds to be Rupees 481-15-1, whilst my Memorandum shows it to be Rupees 480 only; the difference in this instance obviously arises from interest at 4 per cent. on the Rupees 87-8-0. In other respects I believe the statements in Mrs. Fitzgerald's petition to be substantially accurate.

2. At what time or date Mr. Serle misappropriated the Securities in question, when they in fact passed out of his hands, or to whom he parted with them, does not appear from his books, or from any of the records of his office; but it is beyond doubt that on search and inquiry shortly after his death not one of the Securities in question were in the official Cash Chest, where they ought to have been, nor have they since been traced, nor was any part of the Cash balance forthcoming.

3. In his Will Mr. Serle says "there is a large sum—how much I cannot tell—"with George Richardson, of this Rupees 22,500 are James Fitzgerald's &c." Mr. G. Richardson on being applied to by the Administrator General as Administrator of Mr. Serle's estate admitted that Mr. Serle had deposited with his Firm (Messrs. Ashton Richardson and Company) Government Securities for an aggregate amount of upwards of 80,000 Rupees, belonging to and forming part of the estate of one

Coonjee Packey Ahmed, of which estate Mr. Serle was Administrator, and that sometime subsequent to such deposit such Government Securities were sold and the proceeds accounted for to Mr. Serle—nearly, if not the whole of such proceeds being applied to the discharge of Mr. Serle's private personal debt to Messrs. Ashton Richardson and Company. Mr. G. Richardson denied that he ever had any of the Government Securities belonging to the Fitzgerald Trust.

4. The books of the Accountant General's office will probably show up to what date Mr. Serle received interest on the Securities in question, and who next received interest upon them; and this information might enable me (if Government should consider further inquiry either necessary or desirable) to ascertain under what circumstances Mr. Serle parted with the Securities, and to whom. It does not necessarily follow that Mr. Serle endorsed or delivered the securities to the party or parties who *next* received interest upon them; they may have passed through the hands of intermediate holders between the dates on which Mr. Serle last received interest and the dates on which the next payments of interest were made.

5. Should Government resolve upon further inquiry, I would beg to suggest that the Accountant General be requested to investigate the matter in communication with me.

6. I return the order above noted with its enclosures.

RE FITZGERALD'S TRUST.

Government Securities Account.

Dr.									Cr.
1853.					1845.				
Aug. 3rd	To 1 Promissory Note sold Sa. Rs.	22,000	0	0	Oct. 7th	By one Promissory Note received from Messrs. Rowlandson and Rose, Sa. Rupees. ...	22,000	0	0
	Balance remaining Co.'s Rupees.....	24,000	0	0	,, 8th	By purchase of one Promissory Note, No. 1920 of 1842-43, for Co's. Rs.....	500	0	0
					1853.				
					Aug. 5th	By purchase of 14 Promissory Notes, as follows, viz:—			
						No. 13433 for C.Rs. 1000 0 0			
						,, 13434 for ,, 1000 0 0			
						,, 13435 for ,, 1000 0 0			
						,, 13436 for ,, 1000 0 0			
						,, 13437 for ,, 1000 0 0			
						,, 13438 for ,, 1000 0 0			
						,, 13439 for ,, 1000 0 0			
						,, 13440 for ,, 1000 0 0			
						,, 5252 of 1842-43, for C. Rs. 1500 0 0			
						,, 5253 ,, ,, 1500 0 0			
						,, 7702 ,, ,, 2000 0 0			
						,, 7703 ,, ,, 2000 0 0			
						,, 7704 ,, ,, 2000 0 0			
						,, 2207 ,, ,, 5000 0 0			
							22,000	0	0
					Nov. 4th	By purchase of 1 Promissory Note for.	1,500	0	0
	Sa. & Co's. Rs...	46,000	0	0		Sa. & Co's. Rupees...	46,000	0	0

By balance remaining, Co.'s Rupees 24,000-0-0

N. B.—Interest has been drawn on Rupees 22,500 up to 1st February 1860, and on Rupees 1500 up to 31st October 1859.

RE FITZGERALD'S TRUST.

Cash Account.

Dr.						Cr.					
1845.						1845.					
Oct. 8th	To cash paid for a 500 Rs. Pro. Note		528	11	7	Oct. 7th	By cash from Messrs. Rowlandson and Rose.	1,224	10	1
„ 9th	„ „ renewal fee.....		1	0	0	1846.				
1853.						May 13th	By interest on 500 Rs.	20	0	0
Aug. 5th	„ „ for 14 Pro. Notes for 22,000 Rs...		22,009	12	5	„ „	„ 22,000 „	585	12	0
Nov. 4th	„ „ for one Pro. Note for 1500 Rupees		1,500	10	8	June 22d	„ „ „	292	14	0
1845.						Sep. 23rd	„ „ „	292	14	0
Oct. 16th	To cash paid Common Assignee.....		343	9	6	„ „	„ 500	10	0	0
1846.						Dec. 14th	„ „ 22,000	292	14	0
Aug. 5th	To do. do. ...		292	14	0	1847.				
1847.						Mar. 22d	„ „ „	292	14	0
May 6th	„ do. do. ...		292	14	0	„ „	„ 500	10	0	0
Dec. 6th	„ do. do. ...		292	14	0	May 28th	„ „ 22,000	292	14	0
1848.										
Oct. 17th	„ do. do. ...		292	14	0	Aug. 24th	„ „ „	292	14	0
1850.										
April 1st	„ do. do. ...		585	12	0	„ „	„ 500	10	0	0
Nov. 8th	„ do. do. ...		292	14	0	Dec. 3rd	„ „ 22,000	292	14	0
1851.						1848.				
Apr. 12th	„ do. do. ...		292	14	0	Apr. 20th	„ „ „	292	14	0
Sept. 5th	„ do. do. ..		292	14	0	„ „	„ 500	10	0	0
Oct. 28th	„ do. do. ...		585	12	0	May 29th	„ „ 22,000	292	14	0
1853.										
Sep. 27th	„ do. do.		585	12	0	Sep. 4th	„ „ „	292	14	0
1854.										
Dec. 15th	„ do. do. ...		478	0	0	Dec. 4th	„ „ „	292	14	0
1855.						1849.				
Sep. 20th	„ do. do. ...		902	12	0	Mar. 28th	„ „ 500	20	0	0
1856.										
Apr. 30th	„ do. do. ...		375	0	0	„ „	„ 22,000	292	14	0
Oct. 13th	„ do. do. ...		240	0	0	May 19th	„ „ „	292	14	0
1857.										
Aug. 21st	„ do. do. ...		240	0	0	Oct. 9th	„ „ 500	10	0	0
1859.										
Mar. 21st	„ do. do. ...		480	0	0	„ „	„ 22,000	292	14	0
1860.										
Oct. 26th	„ do. do. ...		240	0	0	Dec. 3rd	„ „ „	292	14	0
1845.						1850.				
Oct. 16th	To cash paid Mrs. Fitzgerald.		315	0	0	Mar. 12th	„ „ „	292	14	0
						May 27th	„ „ „	292	14	0
1846.						July 10th	„ „ 500	10	0	0
Feb. 7th	To do. do. ...		300	0	0	Sep. 3rd	„ „ 22,000	292	14	0
Aug. 20th	„ do. do. ...		282	15	9	Dec. 13th	„ „ „	292	14	0
1847.						1851.				
Feb. 15th	„ do. do. ...		300	0	0	Feb. 15th	„ „ „	292	14	0
1848.										
Feb. 21st	„ do. do. ...		531	15	0	May 23rd	„ „ „	292	14	0
Mar. 1st	„ do. do. ...		50	0	0	June 18th	„ „ 500	20	0	0
1849.										
Feb. 12th	„ do. do. ...		70	0	0	Aug. 22d	„ „ 22,000	292	14	0
Mar. 9th	„ do. do. ...		200	0	0	Nov. 29th	„ „ „	292	14	0
						1852.				
Apr. 9th	„ do. do. ...		100	0	0	Feb. 20th	„ „ „	292	14	0
„ 26th	„ do. do. ...		200	0	0	May 18th	„ „ „	292	14	0
Oct. 8th	„ do. do. ...		100	0	0	Aug. 27th	„ „ „	292	14	0
		Carried over.....	33,596	12	11		Carried over...	9,545	2	1

RE. FITZGERALD'S TRUST.

Cash Account.—(Continued).

Dr.						Cr.					
	Brought over...		33,596	12	11		Brought over...	9,545	2	1
1849.						1852.				
Nov. 21st	To cash paid Mrs. Fitzgerald		100	0	0	Nov. 22d	By interest on Rs. 500	30	0	0
1851.										
Jan. 11th	„ do.	do. ...	200	0	0	1853.	„ „ „ 22,000	292	14	0
Mar. 7th	„ do.	do. ...	100	0	0	Feb. 25th	„ „ „ „	292	14	0
June 3rd	„ do.	do. ...	200	0	0	May 20th	„ „ „ „	292	14	0
Oct. 9th	„ do.	do. ...	100	0	0	Aug. 3rd	„ „ „ 500	20	0	0
Dec. 24th	„ do.	do. ...	300	0	0	„	Sale of 1 Government Promissory Note for Sa. Rupees 22,000...	23,713	1	10
1852.										
July 5th	„ do.	do. ...	300	0	0	1855.				
1853.						June 14th	By interest on Rs. 1500	90	6	0
Feb. 11th	„ do.	do. ...	300	0	0	„ „	Rs. 22,000	1,320	0	0
Aug. 2nd	„ do.	do. ...	200	0	0	Sep. 20th	„ „ „	440	0	0
Oct. 26th	„ do.	do. ...	300	0	0	1856.				
1854.						Feb. 12th	„ „ „ 13,000	260	0	0
Feb. 27th	„ do.	do. ...	100	0	0	„ „	„ 500	50	0	0
July 1st	„ do.	do. ...	239	0	0					
1855.										
Jan. 5th	„ do.	do. ...	200	0	0	Feb. 26th	„ „ „ 9,000	180	0	0
						1857.				
June 14th	„ do.	do. ...	180	0	0	Feb. 6th	„ „ „ 22,000	880	0	0
Sep. 21st	„ do.	do. ...	234	3	3	May 11th	„ „ „ 1,500	120	0	0
	„ do.	do. ...	240	0	0	Aug. 7th	„ „ „ 22,500	470	0	0
						1858.				
1856.						Aug. 5th	„ „ „ „	900	0	0
Feb. 13th	„ do.	do. ...	155	0	0	Nov. 9th	„ „ „ 1,500	90	0	0
May 28th	„ do.	do. ...	90	0	0	1859.				
						Aug. 3rd	„ „ „ 22,500	900	0	0
Aug. 28th	„ do.	do. ...	240	0	0	1860.				
1857.						Feb. 4th	„ „ „ „	450	0	0
Feb. 6th	„ do.	do. ...	240	0	0		„ „ „ 1,500	60	0	0
Aug. 13th	„ do.	do. ...	240	0	0					
1858.										
Mar. 1st	„ do.	do. ...	240	0	0					
Aug. 13th	„ do.	do. ...	240	0	0					
1859.										
Feb. 7th	„ do.	do. ...	240	0	0					
Aug. 18th	„ do.	do. ...	240	0	0					
1860.										
Feb. 6th	„ do.	do. ...	240	0	0					
Aug. 14th	„ Balance in hand...		1,101	13	9					
	Total Rupees...		40,396	13	11		Total Rupees...	40,396	13	11

Balance in hand, Rupees 1,101-13-9

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

No. 212. ORDER THEREON, 20th September 1865, No. 1345.

The Governor in Council requests that the Accountant General will investigate the matter referred to in the foregoing letters, in communication with the Government Solicitor, and report the result for the information of Government.

(True Extract).

Acting Secretary to Government.

To the Accountant General.
„ Government Solicitor.

Exd. J. H. Burns.

Judicial 1865. Sept.r

From The Govt. Solr. Madras.

To The Chief Secy. to Govt.

Dated 2nd September 1865.

Rec.d 5-

No. 509.

Enclosures

No. 1893

Reports upon the position of the funds and securities relating to Mr. & Mrs. Fitz-Gerald's Trust of which the late Mr. Serle was the Official Trustee.—

With an order

To the Asst. Secy. to Govt. for Records.

Judicial Letter to Govt. No. 4 of 1866. 24th March

Read Letter from Govt. Solr. dated 2nd Sept. 1865 No. 509 with enclosures

Read Letter from Govt. Solr. dated 13th Sept. 1865 No. 520 with enclosures

Ordered that the Report submitted by the Official Trustee be returned to the Govt. Solr. with instructions to request the Official Trustee to submit his Report to the Supreme Court, and that the Govt. Solr. be informed that the Official Trustee has been directed to submit his Report to the Supreme Court.

Chd. 1915.

200 & 202.