

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.G.O. No. 859 Press
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47-48

Dated 10-7-1918

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Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
10th July 1860.

No. 47. Read the following letter from E. F. HARRISON, Esq., Civil Auditor, to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated 9th July 1860, No. 196.

General Department.

With reference to the Orders of Government of this day's date, No. 854, Judicial Department, I have the honor to state that a month's leave, from the 28th ultimo, can be granted to Mr. S. N. Ward, Civil and Session Judge of Coimbatore, under Sections III, IV, V and VI of the Rules, on the production by that gentleman of a Medical Certificate in the prescribed form. Mr. Ward is not eligible either to privilege or special leave.

No. 48. ORDER THEREON, 10th July 1860, No. 859.
Communicated to Mr. S. N. Ward in reference to his telegram, received on the 7th instant.
(Signed) T. PYCROFT,
Chief Secretary.

No. 859- 10 July 1860.
Communicated to Mr. S.
N. Ward in reference to
his telegram-received on the
7th instant.

J.P.

Mr. S. N. Ward.
Civil & Session Judge } Supd. Dist. Court
of Coimbatore.

*Proceedings of the Madras Government, Judicial Department,
16th June 1865.*

Read the following papers :—

No. 121. From Mr. J. D'SILVA, Principal Sudder Ameen of Calicut, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Calicut, 9th February 1865, No. 22.

Referring to the Order of Government, dated 30th April 1864, No. 622, authorizing my predecessor to inquire into the validity of the claims preferred against the estate of Arrakel Lonen, I have the honor to report, for the information of the Right Honorable the Governor in Council, that two claims regularly preferred against the estate have been established by evidence.

	Claims preferred.			Rateable shares.		
	Rs.	A.	P.	Rs.	A.	P.
Anchu Kudikel Kammu, by Miscellaneous Petition, No. 462 of 1864.	393	12	0	232	6	7
Mallikell Kunni Packi, by Miscellaneous Petition, No. 508 of 1864.	70	0	0	50	2	0
				332	9	7

2. The net proceeds of the sale of the deceased's moveables amounted to Rupees 332-9-7; while the total amount of the claims substantiated is Rupees 463-12-0. I, therefore, beg leave to recommend that the claimants may be paid rateably, as per Memorandum entered marginally.

3. The aforesaid sum of Rupees 332-9-7 having been carried to public account on the 13th April 1864, in obedience to the Order of Government, dated the 27th January 1863, No. 120 (owing apparently to the delay in receiving the order of the 30th April 1864), it will be necessary to obtain also the orders of Government for the re-fund of the said sum.

No. 122. From H. D. COOK, Esq., Civil Judge of Calicut, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Calicut, 27th February 1865, No. 71.

Under the Proceedings of the Madras Government in the Judicial Department of date the 27th January 1863, No. 120, *in re* the estate of one Arrakel Lonen, this Court took charge of the landed property left by the deceased, consisting of two Parambas, situate at Chaliat or Beypore, at Payanjanur Village, in the Ernad Taluq.

2. Both are waste lands: one is ascertained to be the deceased's Jenmom, of the value of Rupees 100, and the other to have been held by him on a Kanom or mortgage right of Rupees 50.

3. As already reported in this Court's letter of the 29th February 1864, No. 70, no one has attended or claimed to take charge of the property, as the heir of the deceased, pursuant to the usual advertisement issued in such cases.

4. Two claims were, however, preferred against the estate, one of Rupees 112-8-0, and the other of Rupees 437. Government will see, by the orders passed by me thereon (enclosure 1), that both were proved, of which one is indeed a claim directly bearing on the deceased's property, which has been held in security for the money advanced to the deceased.

5. Looking to the probable sum that may be realized by the sale of the two Parambas, it would only be a little more than one-third of the aggregate amount of the claims standing against them.

6. But on this subject, I need go no further than to abide by the orders of His Excellency the Governor in Council on the following points:—

1stly.—Whether *both* the claims should be paid rateably.

2ndly.—Whether interest should be allowed to the claim of Rupees 437.

*the Govt. have interdicted
the collecting or receiving
of*

Proceedings of the Madras Government, Judicial Department,
16th June 1865.

7. I have the honor, therefore, to request for the above, or any other orders which His Excellency in Council may be pleased to pass, towards the eventual disposal of the above estate.

Proceedings of the Civil Court of Calicut, under date the 20th February 1865.
Order passed on Miscellaneous Petition, No. 1714 of 1864.

In this case, it is proved by the oral and documentary evidence adduced by petitioner that he had started a Coory of Rupees 500, that the deceased Lonen was a subscriber to half the share of a number, that there were 20 shares, that deceased had received in his turn the amount of his half share, Rupees 250, that the deceased had regularly contributed his subscription for 11 months and paid up Rupees 137-8-0, that he then defaulted and subsequently died. There was therefore 9 months' subscription, or Rupees 112-8-0 due by deceased, which was made up by petitioner as the Manager of the Coory. Petitioner now lays claim against the estate of the deceased, and seeks also recovery of interest. The Exhibit A does not promise any interest, but it shews that deceased bound himself to pay any loss which petitioner might incur, should he fail to continue his subscription. The Civil Judge has nothing before him to satisfy him that petitioner has sustained any loss; or if so, to what extent. The demand for interest, therefore, to compensate for alleged loss must be disallowed. Application will be made to Government about petitioner's claim as proved above.

(Signed) H. D. COOK,
Civil Judge.

Order passed on Miscellaneous Petition, No. 86 of 1865.
Petitioner claims against the estate of the deceased Rupees 437, with interest due on a Bond executed by the deceased on the 25th December 1860, mortgaging, in security of the money, two Parambas now under the charge of the Court. The execution of the Bond is proved by three witnesses. The Civil Judge is fully satisfied with the evidence, oral and documentary, adduced by petitioner, as it corresponds in several material points with the local inquiry instituted by this Court, when it took charge of the said Parambas. A reference will be made to Government about this claim, which the Civil Judge holds to be good as against the estate.

(Signed) H. D. COOK,
Civil Judge.

(True Copies).

(Signed) H. D. COOK,
Civil Judge.

No. 123.
ORDER THEREON, 16th June 1865, No. 859.

The Governor in Council sanctions the payment, in full, or, failing that, rateably, of the claims established against the estate of Arrakel Lonen deceased. For this purpose, the sum already carried to account will be refunded, and authority is granted to the Principal Sudder Ameen to sell one or both the Parambas belonging to the deceased. The result, after satisfying the debts, should be reported for the further orders of the Government.

(True Extract).

To the Principal Sudder Ameen of Calicut.
" Civil Judge of Calicut.
" Collector of Malabar.
" Accountant General.

Ed. J. H. Borne

Secretary to Government.

Handwritten notes in Tamil script, likely a translation or commentary on the official proceedings. The text is written in a cursive style and covers the right side of the page.

and also say that we - Russell
and I are ~~not~~ of guidance of
should accept the safety in provision
that's so to apply the
with it.

I have the honor to acknowledge the receipt of your letter of the 11th inst. in relation to the above matter. I am sorry to hear that you are unable to attend to the matter at present. I will endeavor to have the same attended to as soon as possible. I am, Sir, very respectfully,
 Yours, etc.,
 J. H. [Signature]

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title to the land can be given to any
 purchaser; but probably this is ^{not} ~~not~~
 in the proposal. As I mentioned
 in the last, discussed the matter
 the only means of putting it on a
 legal and proper footing will be by
 legislation.

Yours sincerely
A. H. Royce

The Honorable
W. J. Arbutnot

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Madras March 12th 1861.

My dear Mr. Munro

I came into the Fort the other day to speak to you about these papers, but unfortunately did not find you.

It seems to me quite clear that the Framers of Regulation 3 of 1802 contemplated that Government should take upon itself (quasi an Ordinary Adm. rator) the actual Administration of Assets coming within the operation of Clause 16 of that Regulation; that the Regulation was not intended to authorise, and does not in fact authorise, any such course of procedure, but was intended to provide, and only does provide, for the safe intermediate custody of such Assets, until some person, who is competent as Reculator, Administrator, or otherwise, to take from Government, and give a sufficient receipt for them, applies for their delivery.

I have seen the Deputy Registrar of the High Court, and referred with him to records to ascertain if possible, whether the course taken in re the

2182. 2 marks

all such Cases

and would, therefore, involve undue responsibility of such responsibility, at all events, as it is neither necessary nor desirable that Government should incur; and might lead to litigation.

As a General Rule, I think that the Orders of Government should be to retain such property in deposit until some person, who is entitled as Speculator, Administrator, next of kin, personal Representative or otherwise, to the possession and delivery of such property, and competent to give a sufficient Receipt. As it shall apply for the same, and that when any such application shall be made, it shall be submitted for the consideration of Government, leaving Creditors to assert their claims to a distribution of such property in a due course of administration by such properly institute of in the proper Court.

I return all the papers you sent me and am

Yours very sincerely
R. Mayson

The Honorable.
A. A. Abbott.

Memo.

Mr. Boyson's note of the
12th March '64 on the sub-
ject of the disposal of un-
claimed property falling
under Reg. III - '02 § XVI
Cl. VII.

Cous: 30th Aug. '42 No. 521.
" 18th Mar. '43 " 130.
29th May " 243.
Dea. Dea.

In para 3, Mr. Boyson
states that he referred
with the Deputy Regis-
trar to records in the
High Court to ascer-
tain whether the course
taken in re the estate of
Mr. Sharkey has been the
practice in all such cases,
or was an exception to the
General Rule, but could
get no satisfactory infor-
mation on the point.

2. Papers are put up to show
that the Court did adopt
the course suggested by
the Sudder Court in the
case of Sharkey's estate as
a General Rule, i. e., they
have sanctioned pay-
ment of substantiated
~~debts~~ from the proceeds
of unclaimed property.
It will be seen also from
the papers put up, that
the Court have interdicted
the collecting or receiving
of

assets for the express
purpose of discharging
claims.

Estate of S. S. Phatel, deceased.

Cous: 25 Nov '57 N^o 709.

6 Jan '52 " 10.

10 Feb '52 " 95.

29 Mar '53 " 181.

11 July '54 " 482.

5 Sep " " 626.

Estate of S. M. D'Silva, deceased.

Cous: 7 Oct '56 N^o 1085.

20 Nov '58 " 1645.

Estate of S. L. Phatel, deceased.

Cous: 19 Oct '58 N^o 1471.

13 July '61 " 905.

Estate of Mrs. Helen Sophia
Thompson, deceased.

Pros: 10 May '59 N^o 646.

17 Oct '59 " 1399.

12 Apr '60 " 431.

Estate of W. D'Silva, deceased.

Pros: 2 April '62 N^o 532.

Para 4 of Note

In the earlier of the pa-
pers, the opinion or ruling
of the Sudder Court in
re Sharkey's Estate is ex-
pressly referred to, while
no stress whatever is laid
on what Mr. Boysen
points out as the excep-
tional circumstances
of the case. The reason
is that, unlike the opi-
nions of the Law Officers
of Govt., the extra-judi-
cial opinions of the
Sudder (or High) Court,
expressed on references
from the Govt., are of
a general, not of a
special character.
The Sudder Court used
to state what the Law
is — the Law Officers
advise the course which
~~ought to be~~ is legal, or even
expedient, under the
special circumstances
of the case submitted
to

Para 5 of Note.

to them.

It may be mentioned that, except in cases which are reached by the Administrator General's Acts, & the Muting Act, there is no law providing for the payment of debts due by persons dying intestate, whose heirs or relatives refuse to take charge of their property. This want has hitherto been supplied by the Govt. acting under authority of the opinion of the Sudder Court, viz., that at the expiration of one year from the date of advertisement requiring the heir or others to take charge, the Govt. have the power to dispose of the case according to justice on a report of the circumstances attending it.

it being transmitted "for their orders," under Reg. III-02 § XVI Cl. 7. The Govt. have since 1843 sanctioned payment of debts from assets or otherwise unclaimed, but up to this time nothing adverse has occurred. It may be added that the debts are proved to be valid on summary inquiry before the Court in whose custody the property is.

Mr. Boyson considers that the Regulation provides only for the intermediate custody of ~~orphan~~ assets coming under the seventh clause of § XVI. The law prescribes that the Orders of Govt. are to be applied for when property remains unclaimed for 12 months, & the Orders given (when no creditors appear) is "to carry

carry the cash & proceeds to the credit of the public account." Of course claims subsequently made, are admitted on inquiry.

The Regulation does not state that unclaimed assets are to be applied to the use of the state, but the Govt. have always so "ordered". It can hardly be ~~said~~ said that the Regulation provides only for the intermediate custody of unclaimed assets. In

Act V of '61, § § XXV to XXVII provides for the disposal of unclaimed property. Under § XXVII, the ~~property~~ proceeds of property not claimed within the prescribed time, are placed at the disposal of the Govt.

This phrase placed at the disposal is synonymous with being placed under the orders, when

the form ^{of expression} used in Reg. III-02 § XVI cl. 7. The marginal note to § XXVII of the Act of '61 explains the expression to mean "Confiscation of property". Taking the provisions of the Reg. of 1802 in the same sense, i.e., confiscation & not intermediate custody, it may be inferred that Govt. may safely, instead of appropriating available assets, pay ~~as debts~~ established debts, or, in the words of the Sudder Court, dispose of them according to justice (not law only or strictly.)

Act V of '61 is not in force in Madras, but it is competent for the Govt. to put it in force at any time.

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Memo. as to the com-
petency of the Govt. ~~of~~
~~the~~ to sanction pay-
ment of debts from
assets otherwise un-
claimed, in cases of
Intestacy not reached
by the Meeting or Ad-
ministrator General's Acts

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Feb. 00

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PROCEEDINGS OF GOVERNMENT

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