

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1240	Press
		~~Mis.~~
Dated	9-8-	19-1886

Not to be folded or roughly handled

126-128

Read the following papers :—

No. 126. From the Magistrate of Vizagapatam, to the Acting Chief Secretary to Government, Fort Saint George; dated Vizagapatam, 11th July 1866, No. 163.

It is provided by Section 239 of the "Indian Succession Act, 1835," which applies to intestate or testamentary succession to the property of all but Hindoos, Mahomedans or Buddhists, that pending Probate or Administration, the District Judge is authorized and required to interfere for the protection of a deceased person's property, at the instance of any person claiming to be interested therein, and in all other cases where the Judge considers that the property incurs any risk of loss or damage.

2. This gives pretty ample security to all concerned; but a later Section, 330, requires the Magistrate, whenever any person, not being a Hindoo, &c., shall die within his district, to report the circumstances without delay to the Administrator General, retaining the property under his charge, pending Probate or Administration; and from the opening sentences, it appears that the Section was enacted to give the rights, duties, and privileges of the Administrator General, under Act VIII of 1855, &c.

3. By the last mentioned enactment, however, it would seem that, complete as his jurisdiction may be over the estate of a "British subject," the Administrator General has no functions in the case of a non-British subject, unless the deceased shall have left assets within the local limits of the High Court of Judicature (Sections 11 and 43, Act VIII, 1855).

4. I therefore respectfully request to be informed whether it is incumbent upon the Magistrate in every case to proceed under Section 330 of the Indian Succession Act. Two persons, both non-British subjects, recently died within my jurisdiction—the first a French Nun, the second a Portuguese writer; in neither case is there any dispute about the property, and the effects left are a few articles of dress and of household furniture of the most valueless description. I have not thought it necessary to interfere, but am not sure if I am right.

4. In a third case, the deceased was a "British subject." I accordingly reported the circumstance to the Administrator General, and took charge of the property. This party died (intestate), just as the Court of the District Judge adjourned, consequently his relatives cannot move in the matter of Administration for two months. If a few general Rules could be laid down for our guidance in the discharge of our duty, as Retainers of the property in such cases, it would be very acceptable to the Magistracy. For instance, we are told by the Act [*Executors of their own Wrong*—Exception first, Section 265] that intermeddling with the goods of the deceased, for the purpose of preserving them, or providing for his funeral, or for the immediate necessities of his family or property, is allowable; but may we pay off his servants, sell live stock and perishable goods? This man was an Inspector of Police; he had two ponies which are now eating their heads off. It is not absolutely necessary to sell them to provide for the necessities of the family, but the charges for their livery are so many Rupees thrown away.

*Proceedings of the Madras Government, Judicial Department,
9th August 1866.*

Forwarded for the opinion of the Acting Advocate General, through the Acting Government Solicitor.

(Signed) W. HUDLESTON,
Acting Secretary to Government.

18th July 1866.

No. 127. From the Acting Government Solicitor, Madras, to the Acting Chief Secretary to Government, Fort Saint George; dated Madras, 23rd July 1866, No. 429.

I have the honor to acknowledge the Order of Government noted in the margin, requesting the Acting Advocate General's opinion as to the duties of Magistrates under the Indian Succession Act.

Dated 18th July 1866, and made on letter from Magistrate of Vizagapatam to Government, of the 11th idem, No. 163.

2. I submitted the same for the consideration of the Acting Advocate General; and
3. I now forward a copy of his Opinion and return the order above noted.

COPY—OPINION.

I do not think that Section 330 of the Indian Succession Act, 1865, can be restricted to British subjects. The French Num. or Portuguese writer, referred to by Mr. Carmichael, might have left effects in Madras, and one of the objects of the provision is to call the attention of the Administrator General to the death, so that he may prosecute the necessary inquiries. At the same time, I think that a discretion may be left to the Magistrate, and that, if a Non-British subject should die, leaving property too trifling to be worth the cost of Administration, and it should be clear that he had no assets in Madras, and there was no dispute as to the persons entitled, the Magistrate would be justified in abstaining from interference. By *justified*, I do not mean that he would have a complete defence in law to an action, but that he would incur no appreciable risk of an action; and that, in the eyes of his superiors, his conduct would be correct.

2. I do not think that the Magistrate would be justified in paying off the servants of the deceased. This would involve an adjudication upon claims, with which the Magistrate has nothing to do. He is, of course, authorised to pay all such servants as are necessary to enable him to retain charge of the property.

3. I think he would be justified in selling perishable goods. This would be the only way by which he could retain such property under his charge. As to live stock, their sale would be a matter within the discretion of the Magistrate. If a European gentleman were to die, perfectly solvent, and leaving a valuable stud of horses, it is probable that the Magistrate would not be right in selling them, at all events, without the express request or consent of the family. In the case of the Police Inspector's ponies, a sale would be the wisest thing that could be done, and would come within the 1st exception in Section 265, as being an intermeddling with the goods for the immediate necessities of the property. The discretion of the Magistrate would be exercised with reference to the nature of the animals, the possibility of an advantageous sale, and the injury to the estate from keeping the stock unsold.

4. I must decline, as my predecessors have invariably done, to attempt laying down any general rules for the guidance of the Magistrates. The applicability of any general rule depends so entirely upon the special circumstances of each case, that no one who is destitute of the gift

*Proceedings of the Madras Government, Judicial Department,
9th August 1866.*

of prophecy can lay down such rules with safety. It is also evident that such rules, if promulgated by Government, would have the effect of relieving the Magistrate from that responsibility which the law imposes upon him.

(Signed) J. D. MAYNE,
Acting Advocate General.

23rd July 1866.

(True Copy.)

(Signed) H. J. BROCKMAN,
Acting Government Solicitor.

No. 128. ORDER THEREON, 9th August 1866, No. 1240.

Ordered that the Opinion of the Acting Advocate General, received with the second of the letters above recorded, be furnished to the Magistrate of Vizagapatam, with reference to his letter of the 11th ultimo, No. 163, and it be also communicated to the Magistrates of the other Districts, for information and guidance.

(True Extract).

A. J. ARBUTHNOT,
Chief Secretary.

To the Magistrate of

Ed. J. H. Burns

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following papers.

From the Magistrate of Vizagapatam
From the Dy. Commr. Solicitor
Order 9th August 1866 No 1240.

Mr. Magner's opinion appears to
me to be of a doubtful character. 330 requires action by the Magistrate. They
a person to whom the act applies, shall
act within their jurisdiction limits - And
since nothing in the Act is to be construed
so as to prevent a Magistrate to put himself
in comm. with Adm. Sec. about an
individual to whom prima facie
the Act does not apply because it is
possible the accused may have some
effects in Canada - W.C.

Lang.

Ordered that the
opinion of the Acting
Associate General re-
ceived with the second
of the letters above re-
corded be furnished
to the Magistrate of
Tiruyapatam with re-
ference to his letter
of the 11th ^{with} Statute No 163.
and if he also com-
municated to the
Master of the D^t for
information & guidance

30 Master of Vyagapattam }
" of other Divs. }

Letter of 1st Feb 1867
to the Hon. Secy of State
and

1260/128.

Indian Department.

No. 1247.

PROCEEDINGS OF GOVERNMENT.

Dated 17 August 1867.

copy to
Archy