M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No.	835	**Press** ~~Mis.~~
291-298		
Dated	29. 5.	~~19~~ 1866

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Not to be folded or roughly handled

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

29th May 1866, No. 835.

Estates.

Read the following paper :—

From E. A. LUSHINGTON, Esq., Secretary to the Government of India, Financial Department, to the Chief Secretary to the Government of Madras, dated Simla, 30th April 1866, *No.* 290.

I am directed to transmit, for information and guidance, a summary of correspondence regarding the Rules for dealing with Estates in this country that become escheat to the Crown by failure of lawful heirs.

ENCLOSURE No. 1.

Summary of Correspondence regarding the Rules for dealing with Estates that become Escheat to the Crown by failure of lawful Heirs.

Financial Proceedings, No. 62-1 (Ab.), January 1864.
Home Department, No. 5211, 20th December 1865 (Finl. Procs., Nos. 171 and 171-A and B, January 1866).
To Home Department, No. 561, 3rd February 1866.
From Home Department, No. 1602, 17th February 1866.
To Home Department, No. 1012, 27th February 1866.
From Home Department, No. 2097, 3rd March 1866.

The Government of India having granted to a Mrs. Darke the half of the assets of the estate of the late Major R. Spencer (less one-tenth reserved for the purposes of the Government), Mrs. Darke applied for the payment of the moiety to her in England.

No. 62-1 Ab., January 1866.

2. In complying with her request, the Secretary of State on the 24th November 1863 addressed the Government of India as follows: "Although I thus confirm the Proceedings of your Government in this matter, I wish to point out to your Lordship that the practice observed in this country, in dealing with estates that become escheat to the Crown by failure of lawful heirs, is to grant the estate (subject to a small deduction) to those persons who, but for the illegitimacy, would have had a claim thereto, according to the Statute of Distributions. The fact of the intestate having left a daughter, would, by this rule, have shut out the claim of the mother to any participation in the estate.

3. "In any future case of an intestate estate devolving upon the Crown, I request that the Administrator-General be directed to remit the proceeds to this country, in order that the claims to it may be considered and decided upon by the Secretary of State in Council."

Home Department's Proceedings, Nos. 78 to 80, September 1864.
A Memorandum from that Department, No. 2097, of 3rd March 1866.

4. The instructions in the foregoing paragraph 3, having been communicated to the Administrator-General, Fort William, that officer reported that "the claimants to many escheated estates are in this country, and if the assets are remitted to England, they will often be put to much additional inconvenience and expense in proving their claims. It is also to be remarked that the veracity of the statements contained in such petition must be tested by the authorities in this country, where, in fact, the whole inquiry will practically be conducted. In many cases also a portion of the property consists of land, which must of necessity be placed in the hands of the Local Government."

5. He recommended accordingly that (in modification of the orders of the Secretary of State) the escheated estates should be retained for a time in this country, observing that, "before handing over any property to Government as an escheat, I am obliged, for my own security, to ascertain that the deceased was legitimate and left no next-of-kin at all, or was illegitimate and left no wife or husband (as the case may be) or issue.

6. "In prosecuting my inquiries, it is probable that I shall ascertain if there are likely to be any petitioners for the estate; and such persons will be informed by me what course they should adopt. As a general rule, therefore, I think it would be sufficient to retain the property in India for one year after the date on which it was paid in to Government as an escheat; but if two years were allowed, the interests of all claimants in India would be amply consulted."

7. The Administrator-General inquired, further, regarding the course which he should adopt, "when any portion of the estate consists of houses or land held in fee-simple."

8. And he observed, also, that in case of similar escheats (to those discussed by him) occurring in the Presidencies of Madras and Bombay, "it would be most convenient if the Administrators-General of Madras and Bombay were to hand over escheated property to the respective Governments of those Presidencies."

To Secretary of State, Public Department, No. 57, dated 12th September 1864. (Financial Proceedings, No. 171-A, January 1866)

9. The foregoing was reported in the Home Department to the Secretary of State with the following remarks:—

a.—In reference to the recommendation quoted in paragraph 6, it was observed that, "as a rule, the property should not be retained longer than one year in India, but that the Government should have power to extend the period to two years, in cases in which application for the purpose may be made on good and sufficient grounds."

b.—In reference to the suggestions quoted in paragraphs 7 and 8, it was added: "We agree with the Administrator-General that, in the Madras and Bombay Presidencies, escheated property should be made over by the local Administrators-General to their own Governments, and in the Bengal Presidency to the Government of India. When any portion of escheated property in this country shall consist of land it will be necessary to make the land over in the first instance to the Government of India, who could then place it in the custody of the Local Government."

Financial Proceedings (Ab.), No. 122, December 1865.

10. To the proposal in paragraph 9*a*, the Secretary of State replied in his letter, No. 251, of 31st October 1865, that "I am prepared to acquiesce in the proposal of your Government so far as to allow all estates escheated to the Crown to be made over by the Administrator-General to Government and to be held for one year, during which time parties resident in India who may have claims on the bounty of the Crown in respect of such estates may make application, and at the expiration of that period, the result of the investigation of any claims so preferred shall be referred for the final decision of the Secretary of State in Council.

NOTE.—It is presumed that the Government of India will regulate distributions in their country in conformity with "The Indian Succession Act, 1865." An authoritative decision on this point is necessary as regards escheats which may occur after that Act came into operation.

11. "The general practice in the disposal of the effects of illegitimate persons dying intestate is to grant the residue thereof to those persons who but for the illegitimacy would have had a claim thereto, according to the Statute of Distribution, after deducting the expenses incurred, and a proportion as the Crown's share, according to the following scale, viz.,—

When the residue amounts to less than	£500	.. ..	$\frac{1}{10}$
Ditto ditto	£500 and under £1,000	.. ..	$\frac{1}{8}$
Ditto ditto	£1,000 and under £5,000	.. ..	$\frac{1}{6}$
Ditto ditto	£5,000 and under £10,000	.. ..	$\frac{1}{5}$
Ditto ditto	£10,000 and upwards	.. ..	$\frac{1}{4}$

12. "In special cases, however, in which the deceased may have left an invalid testamentary document clearly indicating his intentions consideration is given to the same.

13. "In case the father of an illegitimate person has not fulfilled the duties of a parent, the rule derived from the Statute of Distribution is departed from, and preference is given to the mother or her relations.

14. "In case of a person dying intestate, leaving a widow and no known next-of-kin, it is usual to permit the widow to retain the estate on payment of the Crown's share, according to the foregoing scale, leaving her responsible for any claim that may be preferred by persons on account of relationship to the deceased."

Financial Proceedings, No. 111, January 1866.

15. The foregoing was a reply to a letter from the Home Department, and it having been communicated to that Department, observations were recorded in the Proceedings of that Department, No. 5211, dated the 20th December 1865, that "the Governor-General in Council is of opinion that the conduct of correspondence on this subject more properly belongs to the Financial Department, and would suggest that such cases be in future referred to that Department direct by the Administrator-General."

16. The Administrator-General having been asked how he distinguishes between estates which are treated as escheats under the rules here considered, and other estates unclaimed for more than fifteen years which he pays over to the Government, to credit of the Revenues in India, has replied as follows, in his letter dated the 26th March 1866: "The responsibility of paying in an estate as an escheat is very great, and I decline to incur it except when the deceased person was illegitimate and died unmarried. In all other cases I wait till the estate has been unclaimed for fifteen years, and due inquiry has been made for next-of-kin."

To Administrator-General, No. 1352, 20th March 1866.

(A true Copy.)

(Signed) J. E. COOKE,
Asst. Secy. to the Govt. of India.

ORDER THEREON, 29th May 1866, No. 835.

Resolved that a copy of the foregoing letter and of its enclosure be furnished to the Administrator-General for information and guidance.

(True Extract.)

A. J. ARBUTHNOT,
Acting Chief Secretary.

To the Administrator-General.

Exd. J. Wright.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read letter from the Secretary to the Govt of India

/Dated 30th April 1866 No 290/

Order – 29th May 1866 No. 835–

Resolved that a copy of the foregoing letter & of its enclosure be furnished ~~to each~~ ~~Zillah Judge and~~ to the Administrator General for information and guidance

~~To the Zillah Judge of~~
~~The Administrator General~~ Ldesp 2/6

Judicial 1860. Department.

No. 835.

PROCEEDINGS OF GOVERNMENT.

Dated 29 May 1861.

297-298.