M.R.O. 1—[illegible]—16-12-25.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 423	Press Mis. —
115-116	
Dated 11-6-	19 [illegible]

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, 11th June 1866.

No. 115. Read the following letter from the Government Solicitor, Madras, to the Acting Chief Secretary to Government, Fort Saint George; dated Madras, 4th June 1866, No. 321.

I have the honor to acknowledge the Proceedings of Government, noted in the margin, relative to the propriety of the Administrator General's including in his Schedules, prepared under the provisions of Act VIII of 1855, the Estates of deceased persons, of whose Wills he may have been appointed Executor, by his official designation.

Dated 23rd May 1866, No. 803, Judicial Department.

2. I obtained from the Administrator General of Madras the Probate of the late Mr. Michael McDowell's Will, granted by the late Supreme Court to the late Administrator General of Madras, as the Executor thereby appointed, and having submitted it and the point raised by Government for the consideration of the Acting Advocate General,

3. I now forward a copy of his Opinion.

COPY—OPINION.

I think that any estate which is entrusted to the executorship of the Administrator General, by virtue of his office, and upon which he draws a commission, under Section 26 of Act VIII of 1855, is an Estate in his charge, as Administrator General, within the meaning of Section 34, and, therefore, that he is bound to render such accounts, and is liable to such control by the Government in respect of it, as he would be, if he had taken out Letters of Administration.

2. It is, however, a very different question whether McDowell's Estate, which was entrusted to a former Administrator General in 1857, is in the charge of the present Administrator General, as such; and I am strongly of opinion that he only holds it, as Executor *de son tort*. The framers of the Act evidently contemplated (see Section 26) the probability that testators might appoint the Administrator General their executor. But in Section 24, which provides that Administration taken by one Officer should enure to the benefit of his successor, nothing is said as to Probate having the same effect. And similarly Section 5, which transferred to the Administrator General all Administrations granted to the Ecclesiastical Registrar, under Act II of 1850, was silent as to Probates, which he might have taken out in his official character (see Act VII of 1849, Section 7). This is the more remarkable, as Act VII of 1849, Section 2, transferred Probates as well as Administrations from the Ecclesiastical Registrar of Bengal to the Administrator General appointed under that Act.

3. It might, no doubt, be argued that an Administrator General is a sort of corporation sole, with perpetual existence, who, without express enactment, would succeed to all the rights of his predecessor. In support of this view might also be urged the fact that Act VII of 1849 contained no provision similar to Section 24 of Act VIII of 1855. On the other hand, the insertion of that Section in the later Act, and of an exactly similar Section (17) in the Official Trustee Act (XVII of 1864) looks as if it was felt that some such provision was necessary. If necessary, then the omission to transfer Executorships is decisive against any such transfer having taken place.

4. The case does not, however, seem to me to be one with which the Government need concern itself. The matter at present is one between McDowell's representatives and Mr. Miller, who is holding their property under a Probate granted to Mr. Teed. The question would arise if any property held under such circumstances were lost by an Administrator General, whose Sureties would probably be advised not to pay.

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

2*nd June* 1866.

(True Copy).

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

Proceedings of the Madras Government, Judicial Department,
11th June 1866.

No. 116. ORDER THEREON, 11th June 1866, No. 923.

Ordered that the foregoing opinion of the Acting Advocate General be communicated to the Administrator General, for his information and guidance. Under this opinion, the late Mr. McDowell's Estate need not be entered in the Administrator General's Schedules.

(True Extract).

Acting Chief Secretary.

To the Government Solicitor.
„ Administrator General.

Exd. J. H. Burns.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from the Government Solicitor—Madras, 3 (Encloses Extract Minute &c. 921)

Order thereon 11th June 1866 No. 923.

Ordered that the foregoing opinion of the Acting Advocate General be communicated to the Administrator General for his information and guidance—Under this opinion the late Mr. McDowell's estate need not be entered in the Administrator General's Schedules

To the Government Solicitor
Administrator General } desp 13/6

Judicial 1866. Department.

No. 923.

PROCEEDINGS OF GOVERNMENT,

F.A. 1891.

Dated. 11 June 1866.

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