

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1151	Press ~~Mis~~
Dated	15-7-1918	

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
19th July 1867.*

No. 219. Read the following letter from the Secretary to the Government of India, to the Secretary to Government, Fort Saint George; dated Simla, 1st July 1867, No. 1827.

Home Department,
Legislative.

I am directed to acknowledge the receipt of a letter* of the 23rd May last from the Acting Secretary to the Chamber of Commerce at Madras, forwarding copy of a communication addressed by the

* Copy enclosed.

Bombay Chamber of Commerce to the Secretary to that Government, on the want of an enactment to make the Registration of Partnerships and Deeds of Trust, &c., compulsory.

2. I am desired to state that the subject is under consideration in the Legislative Department, and to request that Mr. Cornish may be informed accordingly.

From H. CORNISH, Esq., Acting Secretary, Chamber of Commerce, to the Secretary to the Government of India, Home Department; Simla, dated Madras, 23rd May 1867.

I have the honor to forward herewith, for the consideration of His Excellency the Governor General in Council, the copy of a letter addressed by the Bombay Chamber of Commerce, to the Secretary to Government, Judicial Department, Bombay, having reference to a memorial from certain Native merchants and bankers of Bombay, praying that Chamber to move Government for an enactment to make a registration of partnerships and deeds of trust or gifts compulsory under penalties. I also forward a copy of the memorial in question.

The Bombay Chamber being deeply impressed with the necessity of some legal measure for the protection of the interests of merchants and bankers in that Presidency, have invited the co-operation of this Chamber in urging the subject upon the consideration of Government.

The evils arising in Bombay from the absence of any proper system of registration of partnerships, are so serious that this Chamber feel it is only necessary to call the attention of His Excellency the Governor General in Council to the statements made in the accompanying papers to ensure an early consideration of the subject from the Government of India.

In Madras the necessity for compulsory registration is not, of course, felt to the same extent that it is in Bombay; but the Chamber are nevertheless of opinion that the true interests of commerce and trade require that the principle of registration should be generally adopted amongst the Native mercantile community in India, and they therefore cordially support the application made by the Bombay Chamber.

From J. TAYLOR, Esq., Secretary, Chamber of Commerce, to the Secretary to Government, Judicial Department, Bombay; dated Bombay, 28th February 1867.

I am directed by the Committee of Management of the Chamber of Commerce to forward herewith, for the information of His Excellency the Governor in Council, copy of a memorial addressed to the Chamber by a number of the principal Native merchants and bankers in Bombay, praying the Chamber to bring to the notice of Government "the desirableness of a legislative enactment for the compulsory registration of partnerships and of deeds of trust or gifts."

When handing up to Government in March last year the Minutes of various members of the Chamber on the Bill to amend the law of partnership in India, which was at that time before the Governor General's Council, I had the honor, in my letter dated 23rd idem, to direct the attention of Government to the necessity for a registration of partnerships, and of commanditarian loans that might be made under its provisions, but the Bill was passed into a law before the suggestions referred to could have been brought to the notice of the Members of the Legislative Council of India.

Since the Bill referred to became law, the question of a compulsory registration of partnerships has again been under the consideration of the Chamber, and it was recently resolved that

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Government should be addressed on the subject, with a view to a Bill being introduced into the Legislative Council of India, the provisions of which should be framed in such a manner as would provide for accomplishing the objects above-mentioned.

The numerous insolvencies of Native firms which have taken place in Bombay within the last ten months, have revealed a very scandalous state of things in respect to the manner in which Native co-partneries are commonly carried on.

It has been proved, when investigating the facts connected with some of the insolvencies under Act XXVIII. of 1865, that Native merchants have been carrying on business under several different names, and have thus obtained credit and advances from English merchants and bankers that would never have been accorded to them had the actual state of affairs regarding the constitution of these Native firms been known.

A common mode of procedure appears to be somewhat as follows:—Four or five Natives form themselves into as many separate firms, with distinct and separate names, but really consisting of the same persons; they go for advances to English merchants and bankers, each taking a certain proportion; and in this way much credit has been obtained on a basis so exceedingly small, that serious loss has been incurred by English houses where, if the real circumstances connected with such firms had been known, or could have been in any way obtained, credit would not have been given at all.

Cases are known to the Chamber where men have regularly bought and sold for Native firms, signed the names of the firms, and were always supposed to be members of the firms; yet when insolvency afterwards ensued, they denied they were partners, and were thus enabled to get rid of their liability, because it was almost impossible to prove their statement to be untrue.

The question of a compulsory registration and publication of deeds of trust and gifts, referred to in the memorial of the Native merchants and bankers, is hardly second in importance to that of partnerships.

The experience of members of this Chamber fully corroborates all that is set forth in the Native merchants' memorial, regarding the manner in which property has been conveyed to near relatives, or given away nominally as gifts, but really intended to be held for the benefit of the families of men who have become bankrupt, and who defraud their creditors by thus making away with their property without the slightest compunction when they can contrive to do so without bringing themselves within the grasp of the law.

For the protection of the mercantile and banking interests of this country against these serious evils, this Chamber is of opinion that the most effectual remedy will be found in a carefully considered scheme of compulsory registration of partnerships and deeds of trust or gifts.

A custom already prevails amongst European merchants in India of voluntarily announcing by advertisement in the *Government Gazette* and the local newspapers all changes, whether as regards the retirement of existing partners, or the admission of new ones, and by their voluntarily supplying to the compilers of the annual Calendars, the names of the various partners of which their firms are respectively composed. No such custom prevail amongst the Native merchants; on the contrary the greatest secrecy is observed by most of them; and it is next to impossible for European merchants and bankers to find out the truth about Native firms, as regards position and liability of ostensible partners when they have an interest, or suppose they have in concealment.

Machinery for carrying out a scheme of partnership registration could be readily attached to the present Registration Office. There might be two registers alphabetically arranged—one of firms, and another of the individual members composing firms, with the necessary particulars as to age, place of residence, and such other details as might be considered requisite for facilitating reference, and otherwise affording information regarding the constitution of firms, which those having business relations with a body of partners have a right to know.

The names of persons who sign for firms, or hold powers of attorney authorizing them to act for firms, should also be included in the registers.

Compulsory registration would be indispensable to the efficiency of the scheme, and registration should be enforced under certain penalties.

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The Chamber of the penalties is a matter of detail that there need be little difficulty in arranging; but on this point the Chamber, though fully concurring in the principles of the memorial from the Native merchants, does not commit itself to the approval of the details as to the manner in which they propose to carry out the objects of the same.

In bringing this subject before Government, I am directed by the Committee of Management of the Chamber respectfully to express a hope that His Excellency the Governor in Council may take it into his early consideration, and bring it forward at the earliest possible date. Any information or assistance India, with a view to legislation at the earliest possible date. Any information or assistance Government may require in dealing with a question so important to the mercantile and banking interests of this country, which it may be in the power of this Chamber to afford, shall be cordially and cheerfully rendered.

Memorial from VURJEEVUN DOSS, MADOW DOSS, and others, to the Secretary, Chamber of Commerce, Bombay; dated Bombay, 14th November 1866.

We, the undersigned Native bankers, merchants and others, beg to intimate our cordial approval of the opinion expressed by the Chamber of Commerce in its last annual report as to the desirableness of a legislative enactment for the compulsory registration of partnerships. We are of opinion that such an enactment is urgently required, and that if the wishes of the Chamber are complied with by Government, such compliance will not only benefit the entire commercial community, but will effect considerable moral good. We beg leave to suggest that the non-registration of partnerships (giving the name, residence, previous occupation, &c., of each partner in full), and of all changes made from time to time by the retirement of old or introduction of new partners, should be made punishable in the same way as the non-registration at present of Joint Stock Companies; and we would further recommend that no partnership firm should be allowed to appear plaintiffs-at-law for claims which may have originated at any period prior to their partnership being registered.

Another enactment which is, in our opinion, urgently required in the interests of the commercial community, for obtaining which we solicit the influence and exertions of the Chamber, is a law for the publication of deeds of trust or gifts. Instances have lately come to light of persons of influence and wealth having privately placed considerable portions of their property or possessions in trust, or given the same away nominally as gifts to their relations, but really to be held for the benefit of themselves and their families in case of their being unfortunate in their speculations. The effects of such proceedings are most serious, and unless some measures are taken to prevent a recurrence of them, the entire system of commercial credit is endangered—a result which could not but be disastrous to the interests of trade and to the commerce of Bombay. We would point out for the consideration of your Chamber that, in the cases referred to, it was found out only on the bankruptcy of the parties that the property supposed to stand in name of the bankrupts and to be available for the payment of their debts, had been made away with; and unless some legislative enactment be passed, such as that now asked for, it will create distrust even in the richest and most upright traders, because no one will know whether or not their properties have been transferred over to others. We would further point out that if debtors are in this way enabled to obtain the sanction of law for trading on the credit of possessing wealth which had previously been placed beyond the reach of creditors, there is no saying to what extent the examples just brought to light will be followed hereafter. The evil we are noticing is clearly one of those cases in which the English law would teach the people of this country a convenient mode of practising dishonesty, to which they had been strangers previously. We, therefore, suggest that when any one individual sets apart in trust or makes a gift out of his property for the benefit of himself, his wife, family, relations or friends, such deed of trust or gift shall not be valid unless described and notified in the *Government Gazette*. We would also recommend that the proposed Act be made retrospective, and require the publication of all deeds of trust and gifts executed twelve months prior to the passing of the Act.

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Begging of the Chamber to take the above matter into consideration, with the view of pressing the same upon the attention of Government.

No. 220. ORDER THEREON, 19th July 1867, No. 1151.

Resolved that a copy of the foregoing letter be sent to the Chamber of Commerce, Madras.

[Extract].

Acting Chief Secretary.

To the Chamber of Commerce, Madras.

Exd. J. Tulloch.

19 July 1867 N: 1151.

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219.220

To the Chamber of Commerce, Madras.

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21/15/67
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With an enclosure

No. 1827.

From

E. C. BAYLEY, Esq.,

Secretary to the Government of India,

To

THE SECRETARY TO THE GOVT. OF

FORT ST. GEORGE

Home Dept.

Legislative.

SIR,

SINCE, the 1st July 1867.

I AM directed to acknowledge the receipt of a letter* of the 23rd May last, from the Acting Secretary to the Chamber of Commerce at Madras, forwarding copy of a communication addressed by the Bombay Chamber of Commerce to the Secretary to that Government, on the want of an enactment to make the Registration of Partnerships and Decds of Trust, &c., compulsory.

2. I am desired to state that the subject is under consideration in the Legislative Department, and to request that Mr. Cornish may be informed accordingly.

I have the honor to be,

SIR,

Your most obedient Servant,

E. C. Bayley

Secretary to the Govt. of India.