

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

21-22	G.O. No. 1610	Press
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	Dated 9-10-1867	

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Not to be folded or roughly handled

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*Proceedings of the Madras Government, Judicial Department,
9th October 1867.*

No. 71. Read the following letter from the Secretary to the Government of India, to the Secretary to Government, Fort Saint George; dated Simla, 14th September 1867, No. 411.

Home Department.
Legislative.

Referring to letter from this Department noted in the margin,* I am directed to forward, for the information of the Government of Madras, the accompanying copy of a correspondence,† including an Opinion by the Advocate General as to the keeping of Wills under Act X of 1865 (Indian Succession Act) in boxes in the offices of the District Registrars of Assurances.

* No. 431, dated 13th January 1865.

† From Secretary, Government of Bengal, No. 641, dated 27th January 1866.
Office Memorandum to Solicitor to Government, No. 4003, dated 18th April 1867.
Letter from Solicitor to Government, No. 253, dated 26th August 1867, and one enclosure.

From the Secretary to the Government of Bengal, to the Secretary to the Government of India, Home Department; dated 27th January 1866, No. 641.

With reference to your letter, No. 433, dated the 13th instant, I am directed to observe that, looking to the sparseness of the European population in most Districts of Bengal, and the slowness with which Natives in the interior adopt the practice of making Wills, the Lieutenant Governor does not expect that the number of those documents under Act X of 1865 will be large. His Honor, therefore, desires to submit, for the consideration and orders of the Government of India, whether, instead of incurring the expense of purchasing iron safes for the preservation of such documents, it may not be allowed for the present to keep them in the fire-proof boxes in the offices of the District Registrars of Assurances, if such keeping be not held to be illegal under the wording of Section 259 of the Act.

Office Memorandum from the Under Secretary to the Government of India, Home Department, to the Government Solicitor; dated Fort William, 18th April 1867, No. 4003.

In January 1866 a Circular was issued from this office to the Local Governments and Administrations, suggesting, with reference to the provisions of Section 259 of Act X of 1865 (the Indian Succession Act), that every District Judge should be provided with an iron chest for the safe deposit of Wills, and that the chest should be placed in the Collectorate Treasury of the District under the Treasury Guard. In reply to this Circular, the Government of Bengal submits that, considering the paucity of Europeans, and the slowness of Natives to adopt the practice of making Wills, it is not expected that the number of these documents in the Mofussil will be large, and suggested, therefore, that, instead of incurring the expense of purchasing iron safes, it might be allowed for the present to deposit Wills in the fire-proof boxes kept in the offices of the District Registrars of Assurances. It is doubtful, however, whether, having regard to the wording of Section 259, this course can be legally sanctioned, and the undersigned has the honor to request that the Solicitor to Government will, if necessary, take opinion whether the proposal is or is not open to legal objection. A copy of the correspondence referred to is forwarded for reference, and an early reply is requested.

From the Solicitor to Government, to the Under Secretary to the Government of India, Home Department, Simla; dated Fort William, 26th August 1867, No. 258.

With reference to your Office Memorandum, No. 4003, dated 18th April last, I have the honor to forward the Opinion of the Advocate General as to the keeping of Wills, under Act X of 1865 (Indian Succession Act), in fire-proof boxes in the offices of the District Registrars of Assurances.

*Proceedings of the Madras Government, Judicial Department,
9th October 1867.*

OPINION.

It appears to me that, in the present state of the law, Wills which have been admitted to probate cannot be entrusted to the District Registrars of Assurances. According to Section 259 of the Indian Succession Act, the Judge is to file all Wills which he admits to probate "among the records of his Court," and he is to do this "until some public registry for Wills is established." I think that by "Public registry" must be understood some office in which all proved Wills are to be permanently preserved. Act XX of 1866 does not establish any Public registry in that sense; for although, under Sections 44, 46, and 77 of that Act, the Wills are to remain in the charge of the District Registrars after the death of the Testators, it is not provided that they are so to remain permanently. And the High Court in the Original Side has decided that, under Section 237 of the Succession Act, a Registrar must deliver up a deposited Will to the Court when application is made for probate; and, of course, after probate, the document becomes a record of, and would be preserved by, the Court. And in the same way a District Judge, after admitting a Will to probate, must keep it among the records of his Court, whether it has been registered or not. It is also to be observed that the Act of 1866 only applies to the deposit and keeping of Wills which are registered by the Testators in sealed covers. An open Will is (as I understand the Act) to be re-delivered to the person who presents it for registration.

2. Whether Wills after probate can lawfully be deposited by the Judge in the Collectorate Treasury, depends on the question of fact, whether the Treasury is an ordinary receptacle for records of the Judge's Court.

(Signed) T. H. COWIE,
Advocate General.

24th August 1867.

No. 72. ORDER THEREON, 9th October 1867, No. 1610.

The foregoing letter, and the papers received with it, will be communicated to the Registrar General of Assurances, with reference to his letter, dated the 22nd February 1866, No. 53.

(True Extract).

Chief Secretary.

To the Registrar General of Assurances.

„ Honorable the Judges of the High Court.
„ Civil and Session Judge of

Ed. J. Tulloch.

No 1610 of 9 Oct 67

The foregoing letter and
the papers received with
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of Assurances, with refer-
ence to his letter dated
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53.

To the Registrar General

of Assurances

- " - To the Judges of the High Court
- " - Civil & Session Judge of all the Districts