

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	88	Press ~~Mis.~~
Dated	20 . 1 .	19 1868

Not to be folded or roughly handled*CS*
11-2-21

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*Proceedings of the Madras Government, Judicial Department,
20th January 1868.*

Read the following papers:—

No. 136. From the Right Reverend the Bishop of Madras, to the Right Honorable the Governor in Council, Fort Saint George; dated Madras, 16th December 1867.

I have the honor to request the favor of your Excellency's action in the following matter.

2. Occasionally, the Bishop and the Archdeacon are called upon to act as Trustees on behalf of Institutions or Funds for charitable purposes.

3. The advantage of this arrangement is entirely in favor of the Institution. The Bishop and Archdeacon have no personal interest in it, and are selected to be Trustees solely on account of their official position, which constitutes them "Corporations sole."

4. The Trust Deeds in such cases are differently worded from those in which we accept a personal trust, the former always containing, after the title "Bishop" or "Archdeacon," the words "for the time being."

5. The Registration Act (XX, 1866, Section 89) exempts, amongst others, "Official Trustees" from attending in person at the Registration Office to present an Instrument for registration.

6. The Registrar General is of opinion that I am not exempt from attending in person.

7. I request that your Excellency in Council will be so good as to ascertain, on behalf of the Archdeacon and myself and our successors, whether, when we become Trustees in our corporate capacity, we are bound to attend in person for the purpose of presenting the Trust Deed for registration.

Referred to the Registrar General of Assurances for report.

FORT SAINT GEORGE,
18th December 1867.

(Signed) R. S. ELLIS,
Chief Secretary.

No. 137. From the Registrar General of Assurances, to the Chief Secretary to Government, Fort Saint George; dated Madras, 19th December 1867,
No. 147.

I have the honor, in returning the accompanying letter of the 16th instant, from the Bishop of Madras, to state that I received, a short time ago, a note from the Domestic Chaplain, inquiring whether, in registering a deed of conveyance, the personal attendance of the Bishop, to whom the conveyance was made, was indispensable. Mr. Goodhart observed that in the case of the Director of Public Instruction it was not required, and that the same exemption could, he supposed, be extended to the Bishop, if not already existing.

2. I informed Mr. Goodhart that if the Bishop was not himself an executing party his attendance was unnecessary. If the instrument was executed by him as an Officer of Government, he was not required to appear. It was in this capacity that the Director of Public Instruction was exempted. I added that I was not aware whether any instruments were or could be executed by his Lordship as an Officer of Government. If the instrument was not executed by him as an Officer of Government, it was necessary that he should appear either in person or by Agent.

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3. The Bishop, in the letter now under reference, does not appear to claim exemption as an Officer of Government, but as an Official Trustee. The term "any Official Trustee" used in Section 89 of Act XX of 1866, is, I presume, not intended to mean any kind of Ex-officio Trustee. The Official Trustee therein referred to is understood by me to mean any person holding the office of Official Trustee under Act XVII of 1867.

Referred to the Advocate General for his opinion.

FORT SAINT GEORGE,
21st December 1867.

(Signed) R. S. ELLIS,
Chief Secretary.

No. 138. From the Government Solicitor, to the Chief Secretary to Government, Fort Saint George; dated Madras, 9th January 1868, No. 18.

I have the honor to acknowledge the Order of Government noted in margin, with its enclosures, requesting the Advocate General's opinion as to whether the Bishop of Madras comes under the exemption of Section 89 of Act XX of 1866.

Dated 21st December 1867, and made on letter from Registrar General of Assurances, Madras, to Government, of the 19th idem, No. 147.

2. I submitted the matter for the consideration of the Advocate General, and, having conferred with him thereon, I now forward a copy of his opinion on the subject.

3. I likewise return the Order and enclosures above noted.

OPINION.

I have carefully perused the letters of the Lord Bishop and the Registrar General of Assurances, submitted with this reference. I do not think that the Lord Bishop comes, under the circumstances he puts, under the exemption of Section 89 of Act XX of 1866 in favor of Official Trustees. The office of "Official Trustee" is one expressly created by a previous Statute, Act XVII of 1864, and I think there can be no doubt that the Legislature had Trustee under Act XVII of 1864 in mind when passing the Act for the Registration of Assurances.

2. Were there any other *Official* Trustees in India (and I am not aware that there are), the words of Section 89 might be large enough to cover them; but I am clearly of opinion that the Lord Bishop is not an *Official* Trustee in the cases in which he puts. It is the confidence which his office inspires, no doubt, which makes people or institutions desirous of obtaining the benefit of so satisfactory a Trusteeship; but this will not make him an *Official* Trustee. Many persons, before the passing of the Official Trustee Act, used to constitute the Supreme Court Registrar, for analogous reasons, their Trustee, and I believe used the words "for the time being"; but this did not make him an *Official* Trustee. There was nothing in his office which made it a duty incumbent on him to accept Trusts; and, hence, they were not official, though performed by an official of repute.

3. The Bishop cannot be regarded as an "Officer of Government," so as to bring his Lordship within another of the exceptions of Section 89; nor has the Government any power of enlarging the exemptions constituted by the Act.

MADRAS,
7th January 1868.

(Signed) J. B. NORTON,
Advocate General.

(True copy.)

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

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20th January 1868.

No. 139.

ORDER THEREON, 20th January 1868, No. 88.

Ordered that a copy of the Opinion of the Advocate General be communicated to the Right Reverend the Bishop of Madras.

(True Extract).

Chief Secretary.

To the Right Reverend the Bishop of Madras.

„ Registrar General of Assurances.
„ Government Solicitor.

Exd. J. H. Burns.

No.

The Adyar, Madras
16. December 1867.

To The Right Honourable
The Governor in Council
Fort. St. George

My Lord,

I have the honour to request
the favour of your Excellency's action in
the following matter.

2. Occasionally the Bishop and
the Archdeacon are called upon to act as
Trustees on behalf of Institutions or Funds
for charitable purposes.

3. The advantage of this arrangement
is entirely in favour of the Institution. The
Bishop and Archdeacon have no personal
interest in it; and are selected to be trustees
solely on account of their official position,
which constitutes them "Corporations Sole."

4. The Trustdeeds in such cases
are differently worded from those in which
we accept a personal trust, the former

always containing, after the title "Bishop" or "Archdeacon," the words "for the time being."

5. The Registrations Act (XX. 1866 section 89) exempts, amongst others, "official trustees" from attending in person at the Registration Office to present an Instrument for Registration.

6. The Registrar General is of opinion that I am not exempt from attending in person.

7. I request that your Excellency in Council will be so good as to ascertain on behalf of the Archdeacons and myself and our successors, whether, when we become Trustees in our corporate capacity, we are bound to attend in person for the purpose of presenting the Trustdeed for registration.

I have the honour to be,
My Lord,

Your Excellency's faithful Servt.,
F. Madras.

Read Nos 2804. 2833. & 67.

Order N^o 88 of 20 January 1868.

2804
2833/68
WRL

Ordered that a copy of the opinion of the Advocate General be communicated to the Right Reverend the Bishop of Madras.

WRL

The Right Rev^d the Bishop of Madras,
Registrar General of the Province,
for the Government of Madras.