

1. Number of pages 16
2. Date of repair 10.3.26
3. Initials of Rep. *[Signature]*

M.B.O. 1-82 600-29-11-80

MADRAS RECORD OFFICE.

Government of Madras.

Pension DEPARTMENT.

G.O. No.	<i>1689-70</i>	Press Mis.
Dated	<i>24-10-</i>	18 <i>86</i> .

Not to be folded or roughly handled

N^o 318 of 1866/67

8¹/₂

From

Madras Police
Commissioner's Office
6th September 1866.

Major G. S. Mearns
Commissioner of Police

To

J. Miller Esq
Administrator General
Madras.

Sir,

I have the honor to acknowledge the receipt of
3 letters regarding the Estate of the late Mr Mearns
Lieut. M. G. S. viz;

1. Your letter of 31 Ultimo N^o 2141.

2. D^o N^o 2233 of the 5th Instant

3. D^o N^o 2254 D^o

2. The purport of letter N^o 3 is quite incompre-
hensible to me. Messrs Shaws & Aldrich are not my
Solicitors, nor have I had anything to do with them
in the matter. I sent letter N^o 1 to Doctor Harris on
the 4th Instant & he returned with any remarks he
might have to offer. This he has not yet done, but
it appears that he has conferred with you personally.

3. I have referred the question whether I can legally act under Section 330 Act X of 1865 to the Law Officers of the crown - The Specification therein contained may perhaps be held to apply to me, though I cannot think that the Legislature in framing this section, had in contemplation the Commissioners of Police at Presidency Towns. In other Legislative enactments where duties assigned to Magistrates in Districts are directed to be performed by the Commissioners of Police at the Presidencies, the latter Officer is expressly designated by that title.

4. Nor do I consider that the provisions of Act X of 1865 apply to Mr. H. Linton's Estate. Mr. H. Linton's domicile of origin was in England - He left none but moveable property - consequently such property does not fall under the provisions of the Indian Succession Act - vide Sections 5, 6, 7 and explanation to Section 10 of this Act.

5. And even if the Estate is liable to the provisions of this Act, I consider that Dr. Harris and his friends are fully justified in their proceedings under the first exception to Section 265.

6. The circumstances of the case are shortly these - Mr. Linton died in Dr. Harris's House. He appears to have died intestate. Doctor Harris conjointly with three gentlemen of the Madras Civil Service examined the papers and effects of the deceased, took an inventory of the latter, packed them with Messrs. Parry & Co in Boxes and lodged them

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them with Messrs. Parry & Co the Agents of the deceased. They sent the life stock for sale to Messrs. Waller & Co and finally communicated their proceedings to the father of the deceased in England requesting him to send instructions to Messrs. Parry & Co for the administration of the Estate.

7. Nothing in my opinion could be more satisfactory than this to the friends of the deceased. The term used in your letter No 2 "parties calling themselves friends" does not apply to the case in point, if you mean to imply that such parties may not really be acting a friendly part, and I cannot see that the object for which your office was created (which I take to be the protection of Estates otherwise unprotected) has been defeated in this instance.

8. If I am right in supposing that the provisions of Act X of 1865 do not apply to the Estates of persons domiciled out of British India then the only actual provisions of Law authorising the Commissioners of Police to deal with such Estates are contained in Section 113, 114 of Act XIII of 1856 which refer to moveable property under Rupees 200 in value only. In pursuance of my general duties for the protection of property I, as Commissioner of Police, take temporary charge of unprotected Estates and report the fact for your information, but unless the Government should see fit to order otherwise, I shall always refuse to interfere with the Estate of English Gentlemen when I am satisfied that they are under the safe care of men of honor and trustworthy friends of the deceased in the best

best interests of the nearest heirs.

I have the honor to be

Sir,

Your most obedient servant

(Signed) C. S. Hearn

Commissioner of Police

N^o 103

11 52
Madras Police
Commissioner's Office
27th September 1866

From

Major C. S. Hearn

To

Commissioner of Police

J. D. Sini Esquire

Secretary to Government

Fort Saint George

Sir,

I have the honor to return the papers connected with the Administrator General's representation to Government dated 8th Instant regarding the late Mr. Linton's Estate and to forward the opinions given by the Acting Advocate General on the points raised by Mr. Miller.

2. The acting Advocate General considers

1. That the definition contained in section 330 Act X of 1865 may be held to apply to the Commissioner of Police in Madras.
2. That the general provisions of Act X of 1865 do apply to the Estate of the late Mr. Linton and to the Estates of all persons who are not Mahomedans, Hindis, Buddhists or specially exempted under Section 332.
3. That the 3rd point raised by Mr.

Miller

Dec 24. 1866

1689-90

Miller was founded upon a misconception
on his part of the meaning of para
8 of my letter No. 318 of the 6th instant.

3. The Acting Advocate General does
not think it probable that the Legislature
in framing Section 330 of Act X of 1865
intended it to apply to the Commissioners
of Police in Presidency Towns. If this
be so it would seem unfortunate that
the accidental fitness of a definition
should render it compulsory on this
Department to undertake duties which
Mr. Mayne admits would be burthenous
and unnecessary and which would in
some instances be vexatious in the last
degree to the representatives of the deceased.

4. A dies leaving a will constituting his
widow B sole executrix. A's property is in
B's hands. But until Letters of Administration
or Probate may be taken out the
Commissioner of Police is bound to
take charge of the Estate and to seal
his seal even on the private papers of
deceased. Such a proceeding would be
monstrous.

Hitherto

Hitherto, as pointed out by me to the
Administrator General I have acted in
such cases merely as the General Custodian
of unprotected property. Notwithstanding
Miller's opinion. I consider that I am
well able to judge whether an Estate
needs such protection or not. Persons
intermeddling with Estates are liable
for their acts before the proper tribunals
and a too close Police espionage into such
matters would seem unnecessary and
undesirable. As the law has now
been laid down by the Acting Advoca-
te General there is no longer any
doubt in the matter. The Estates of a
considerable ^{of the Community} section must be taken charge
of by me pending report to the
Administrator General. But I cannot
think that it was the intention of the
Legislature to do more than provide for
the security of Estates which might need
special protection. and I trust that measures
may be taken to relieve this Department
of the inquisitorial and impracticable
duties said to be imposed upon it by Section
330 of Act X of 1865.

I have the honor to be
Your most Obedt. Servant
J. Mearns
Commissioner of Police

No. 1690-

The Secretary to the Government
of India,

Asia

Sir,

I am directed by the Governor in Council to forward to you for the consideration and orders of the Government of India the ^{annexed} papers in which certain points are discussed relative to the duties and obligations of the Commissioner of Police at Madras under the Indian Succession Act in the matter of the Estates of European British subjects dying intestate within the town and suburbs of Madras.

2nd late Mr. Linton, the
late

From Ann^a Jacobs. 8th Sept^r 1844
" Comm^t. of Peter 27th " " No 103.

Feb. 1999.

29
20
21

17 The Furniture of other
class

The Secretary to Govt
For Geo. George

Sept 27th

Dec 28th {
Apr 6 1886.

40 2/63.

Deutscher Papierhandel

with the Administrator General,

Representation to Governor

Regarding the late Mr.

Victims Estate. Howard

Opinion of the Advocate

General Street, March 1861

Department of the Interior

receives from many of

of the nature in question

Leitch & Co

CL 2805
A9 "
2-23-2005
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late Acting Under Secretary
in the Department under
the Chief Secretary, died
intestate in August last.
Some of his friends, with
the knowledge and consent
of the Commissioner of
Police, examined the deceased's
papers and effects and
made over the latter
to the deceased's Agents
and reported their pro-
ceedings to Mr. Linton's
father in England.

3 The Administrator
General has taken ex-
-ception to these measures
as irregular and illegal,
and two points have been
raised in the correspond-
-ence which ensued between
him and the Commissioner
of

of Police, viz

1st Whether the Commissioner
is the Chief Officer charged with
the executive administration in
Criminal matters within the
meaning of Section 330 of the
Indian Succession Act of 1850.

2nd Whether the provisions of
the Act apply to an Estate
like that of Mr. Linton, who
had his domicile in England
at the time of his death
and left only moveable pro-
perty in India.

4 The opinion of the
Advocate General has been
taken on both points. He
states that, while it is pro-
-bable enough that the fra-
-mework of Section 330, which
was inserted in Special Com-
-mittee, had not the Presidency
towns in view at all, the
terms of the Section are
wide enough to include
those towns and must
be

be held to apply to the
Commissioners of Police.
Regarding the second
question also, Mr. Mayne
is of opinion that the
general provisions of Act
X of 1865 do apply to the
Estate of the late Mr.
Linton and to the Estates
of all persons who are
not Mahomedans, Hindus,
Buddhists, or specially
exempted under Section 332.

5 In giving these
opinions, Mr. Mayne
draws attention, it will
be seen, to the operation
of Section 330 with a view
to its repeal or amend-
ment. He points out
that in the Proposed Bill it
will be found in direct
conflict

conflict with Section 239, while
in the Presidency towns, the
labor it will throw upon
the Police will be enormous.
His provisions, he adds, are
compulsory and even if the
deceased dies leaving his
property in the hands of
his sons or his widow and
leaving a will of which
he had appointed them
the Executors, the Com-
missioner of Police will
still be bound to take
charge of the property until
administration or probate
may be taken out. Such
a course, it is urged, will
be found as burdensome
to the Executive as it is
unnecessary for the protec-
tion of property.

6 The Governor in
Council

the Council concern in these
views and consider the
interposition of the Com-
missioner of Police to
the extent required by the
Law to be clearly open
to great inconvenience
and objection, I am directed
therefore to request the
attention of the Supreme
Government to the subject
in view to such remedy
being applied as may
appear to them called
for under the circumstances
of the case.

JOS.

Fort St. George
24 Oct 1856

of B.R.

The two letters with
enclosures of 1856
1857

Handwritten notes at the top of the page, including "1890" and "The ..."

Dated 21st October 1885.

Handwritten text in the center, including "1885" and "The ..."