

- (1) Number of pages 54
(2) Date of repair 6 3 50
(3) Initials of the Referencer _____

MADRAS RECORD OFFICE

Government of Madras

Revenue

DEPARTMENT

G.O. No.	93	Press
B.P. No.		Mis.
Dated <i>21st</i> January 1885.		

Original

Not to be folded or roughly handled

21st JANUARY 1885, No. 93, REVENUE.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—the following G.O., dated 28th July 1884, No. 1859, Judicial :—

Read—again the following paper :—

Letter, dated 6th May 1884, No. 1129, Judicial.

Read—the following papers :—

Extract from the Proceedings of the Government of India in the Home Department (Judicial), No. 50—1654-63, under date Simla, 11th November 1882.

Read again—

Home Department circular, No. 17—1121-1130, dated the 27th August 1881, to all local Governments and Administrations, calling for information on certain points connected with the disposal of escheated estates belonging to Hindus, Muhammadans, and others to whom the Indian Succession Act does not apply.

Read also the following replies to the circular of 27th August :—

From Government of Madras, No. 2322, dated 14th November 1881.
" " of Bombay, " 6982, " 21st October 1881.
" " of Bengal, " 2678-J., dated 31st July 1882.
" " of the North-Western Provinces and Oudh, No. 229, dated 29th March 1882.
" " of the Punjab, No. 692, dated 28th July 1882.
" Chief Commissioner of the Central Provinces, No. 402-20, dated 4th Feb. 1882.
" " of British Burma, No. 508-3B., dated 23rd January 1882.
" " of Coorg, No. 1586-93, dated 6th January 1882.
" " of Assam, No. 198, dated 2nd February 1882.
" Resident at Hyderabad, No. 321, dated 12th August 1882.

Resolution—

In the circular, dated the 27th August 1881, quoted in the preamble, local Governments and Administrations were requested to furnish the Government of India with a report on the following points in regard to the disposal of escheated estates which may have belonged to Hindus, Muhammadans, and others to whom the Indian Succession Act does not apply :—

- (1) The practice which has hitherto prevailed in dealing with such escheats, together with particulars in regard to the treatment of the more important cases which have occurred in the several provinces ;
- (2) the pecuniary value of such escheats during the last ten years ; and
- (3) whether the existing practice is in accordance with native custom and feeling.

2. It appears from the replies received that the practice which prevails in the several provinces in dealing with escheats of the kind under notice is not altogether uniform in points of detail, but there is sufficient evidence to show that the existing

21ST JANUARY 1885, No. 93, REVENUE.

Order—dated 28th July 1884, No. 1859, Judicial.

The foregoing papers regarding the disposal of escheated estates will be communicated to the Revenue Department for information and guidance, and to all District Judges, through the High Court, for information.

(True Extract.)

(Signed) E. F. WEBSTER,
Chief Secretary.

To the Revenue Department.

„ Honorable the Judges of the High Court, with C.L.

ORDER—dated 21st January 1885, No. 93, Revenue.

Miscellaneous.

Communicated to the Board of Revenue for information and guidance. They are requested to submit a statement in value, for transmission to the Government of India as required in paragraph 2 of their Resolution, dated 23rd May 1883, No. 740.

2. The Board will also prepare a new standing order on the subject, noticing the several classes of escheats coming before Collectors for disposal, and submit it for the approval of Government. A printed précis of the orders on the subject, which may be found useful, is herewith sent to the Board.

(True Extract.)

(Signed) H. E. STOKES,
Secretary to Government.

To the Board of Revenue, with one enclosure.
„ Accountant-General.

Exd. J. Henricus.

50 Copies.

NOTE ON ESCHEATS.

The Government of India have ruled* that, on the occurrence of the escheat of estates which may have belonged to Hindus, Muhammadans, or others to whom the Indian Succession Act does not apply, the claims of any persons who, except for the fact of illegitimacy, would have been entitled to succeed, or who for any reason have a moral, though not a legal, claim to consideration, should be dealt with in a liberal spirit, and that such cases should in future be reported to the Government of India for final orders with suitable recommendations, save in cases where the escheated estate or property does not exceed Rs. 1,000 in value. In the excepted cases, the Local Government is empowered† to dispose of the property, subject to the submission of an annual statement showing such cases.

* Resolution, dated 11th November 1882, No. 50—1654-63, Judicial Department (Current No. 5539).

† Endorsement, dated 23rd May 1883, No. 740, Judicial Department (Current No. 5539).

‡ Letter, dated 6th May 1884, No. 1129, Judicial Department.

§ Regulation III of 1802, Section 16, Clause 3. Do. VII of 1816, do. 6.

Instructions for officers dealing with that class of property, the Government of India have further ruled that in cases where the Local Government has a pure discretion conferred on it, by an enactment, it is incumbent on such Local Government to exercise the discretion in accordance with any instructions which the Government of India may think fit to issue in the matter, and that in view of the provisions of 16 and 17, Victoria, Chapter 95, Section 27, and in the absence of any Legislative Act of the Governor-General in Council regulating the disposal of real and personal estate escheating or lapsing for want of an heir or successor, it is desirable that the orders of the Government of India should be taken in the class of cases referred to.

2. It being thus obligatory on this Government that the requisition of the Government of India should be complied with, it becomes necessary to examine whether the orders on the subject already in force in this Presidency need any modification, and if so, to what extent. Further, some of the orders having emanated from the Revenue Department, some from the Judicial, and some from the Board of Revenue, they are somewhat confusing, and the Board's Standing Order on the subject is incomplete. The present opportunity may, it is thought, be taken of collecting the orders together and issuing a new standing order. The following note is submitted chiefly with this object.

3. The law, decisions and orders on the subject, divide themselves into two main heads, viz.—

I. What constitutes an escheat.

II. How and by whom should it be dealt with.

4. As to the first question, the guiding legal maxim is—“*quid nullius est, est domini regis*,” i.e., that which is the property of nobody belongs to our lord the king. It is a general rule according to English law that whenever the owner, or person actually seized of land, dies intestate, and without heirs, the law vests the ownership of such land either in the crown, or in the subordinate lord of the fee, by escheat. (Broom's Legal Maxims).

5. By 16 and 17, Victoria, Chapter 95, Section 27, all forfeitures for crimes of any real and personal estate escheating or lapsing for want of an heir or successor, all property devolving as *bona vacantia* for want of a rightful owner, was declared to belong to the East India Company in trust for Her Majesty for the service of the Government of India, provided that the Governor-General in Council shall have power to make any grant or disposition of that property in favor of any relative or connexion of the person from whom the same shall have accrued. By 20 and 21, Victoria, Chapter 106, Section 39, the powers of the East India Company in this respect have been transferred to Her Majesty's Government.

6. Now, as to the question 'what constitutes an escheat,' which is involved in the law governing "succession and inheritance," the British Legislature have laid down* that the Muhammadan law in cases where the parties are Muhammadans, and the Hindu law in cases where the parties are Hindus, or any custom having the force of law and governing the parties or property concerned, shall form the rule of decision, unless such law or custom has, by legislative enactment, been altered or abolished. The provisions of the Hindu and Muhammadan laws on the subject will, therefore, be briefly noticed here.

7. The Hindu law declares that, failing all the claimants specially enumerated, the property of all but Brahmins vests by escheat in the king as *ultimus haeres*, and that the estate of a Brahmin descends eventually to Brahmins or learned priests, but never as an escheat to the king. The Privy Council, however, have decided† that, on the death of a Brahmin without heirs, the property of all but Brahmins vests by escheat in the king as *ultimus haeres*, and that the estate of a Brahmin descends eventually to Brahmins or learned priests, but never as an escheat to the king. The Privy Council, however, have decided† that, on the death of a Brahmin without heirs, the property of all but Brahmins vests by escheat in the king as *ultimus haeres*, and that the estate of a Brahmin descends eventually to Brahmins or learned priests, but never as an escheat to the king.

† *Suth. Privy Council Judgments*, p. 417, Collector of Masulipatam *versus* C. V. Narayanappa. The Privy Council, however, have decided† that, on the death of a Brahmin without heirs, the property of all but Brahmins vests by escheat in the king as *ultimus haeres*, and that the estate of a Brahmin descends eventually to Brahmins or learned priests, but never as an escheat to the king.

† *Vide* the opinions of Messrs. Handley and P. O'Sullivan printed in G.O., 11th September 1877, No. 2696.

8, Moore's Indian Appeals, p. 529.
4, do. do. 246.
Mayne's Hindu Law, Sections 536 and 505.
Norton's Leading Cases, p. 599.

Whatever descent prevails, and even where the State, as the *ultimus haeres*, takes by escheat, the duty of some ceremonial performance to the deceased is still enjoined by the Mitakshara.

Where a Zamindar alienates a portion of his estate to his illegitimate children or others, and where the grantees die heirless under circumstances when the Zamindar or his successors cannot legally recover the property, the crown is by the general prerogative entitled to take it, subject to the payment of the rent reserved, and there is no authority upon which the power of taking by escheat can be attributed to the Zamindar. The principles of English law are inapplicable to a Hindu Zamindar. It follows from this decision that, where a portion of a permanently settled estate in the Madras Presidency has been alienated to others from whom the Zamindar or his successor is legally barred § from recovering, the property escheats to the Government if the grantee dies heirless. Not a single case of this nature ever appears to have been reported to Government, apparently because the local Revenue officers are not aware of the law on the subject, or because they have no means of acquainting themselves with escheats of this nature.

It has been held in the North-West Provinces that property bestowed by a Zamindar on a Mahant *in perpetuity*, escheats to the donor, on failure of legal heirs (N. W. P. Report, 1855, Case 70).

In a suit by the crown claiming lands as an escheat, which are admittedly in the possession of the party claiming as heirs, the onus is on the crown to show that the last proprietor died without heirs. It is open to the defendant in such a suit to set up any *jus tertii* to bar the claim of the crown. In a case where the crown waived its rights in respect of an escheated property, the waiver is held to be an estoppel.

P. C. App. from Bengal H. C., 17th July 1868.
Normandy's Digest and Mayne's Hindu Law, Section 505.

XI Bengal Law Report, 1873, page 144.
Normandy's, page 229.

8. Under the Muhammadan law, on failure of all the persons enumerated as heirs, residuaries or distant kindred, the property escheats to the public treasury. The law or the usage which inflicts forfeiture of, or affects rights on, change of religion, or loss of caste, has ceased to be enforced under Section 1, Act XXI of 1850. It has generally been held, however, that the property earned by a male apostate since the time of his apostacy, belongs to the crown,—*vide* Mac. (1881 edition) XI, 11, 80, 82 and 155; also Sections 3 and 7, Bengal Regulation V of 1799.

9. Under the Indian Succession Act X of 1865, if a man dying intestate leaves no widow, or lineal descendants, or kindred, the property goes to the crown (Section 28), subject of course to the debts of the deceased (Stokes' Succession Act, page 17). When the illegitimate son of an Englishman by a Muhammadan woman died intestate, leaving a mother, a mistress and several illegitimate children, it was held that his property escheated to the crown in default of heirs. I Bengal O.C., 87 (16); Normandy's, page 16. The Madras High Court have* held that a dancing girl is no heir to her deceased sister's property.

* G.O., 2nd August 1876, No. 1576, Judicial Department.

10. Property which comes before Collectors for disposal, is one of three kinds, viz.—

- I. Personal property of persons dying intestate and without heirs.
- II. Real property of persons dying intestate and without heirs.
- III. Unclaimed moveable property found on high roads.

As regards the disposal of moveable property escheating in the mofussil, Clause 7, I—Personal Property.

† When a District Judge has received information that a person has died intestate, leaving personal property, and that no claimant to the property has appeared, he is to take the requisite measures for the safe keeping of the property and advertise for an heir; and if no heir appears within 12 months, he is to make an inventory of the property, and transmit it together with a statement of the circumstances of the case to the Governor in Council for his orders.

As regards moveable property of persons dying intestate within the town of Madras, Sections 76 and 77 of the Madras Police Act, VIII of 1867, lay down that when such property is under Rs. 200, it may be taken charge of by the Police and delivered, under orders of the Commissioner of Police, to the party claiming to be entitled thereto. Letters of administration need not be taken out in this case, and these sections have been expressly saved by Section 66 of the Administrator-General's Act, II of 1874. If the sum exceed Rs. 200, the Administrator-General is to take charge of the property which, if not claimed for 15 years, will "be carried to the account and credit of the Government of India for the general purposes of Government." *Vide* Sections 62 and 63, Act II of 1874, Imperial.

Section 64 of the last-quoted Act provides that District Judges should take charge of property of persons, other than a Hindu, Muhammadan, or Buddhist, or a person exempted under the Indian Succession Act, 1865, Section 332, who die leaving assets within the limits of their jurisdiction, and that they should report the circumstances to the Administrator-General. Apparently Collectors have nothing to do with cases of this

Do. Madras Town.

Do. of Non-Hindus, &c., in the Mofussil.

sort. It is not clear whether the Government of India contemplate a reference to them in the cases falling within the jurisdiction of the Administrator-General also; his powers under the Act, however, are complete and do not require a reference.

11. Questions often arise, with reference to the marginally-quoted authorities,* whether the Civil Court, the Collector of the District, or the District Magistrate should deal with the moveable property of persons dying intestate in the Mofussil.

- * 1. F. U. Proceedings, 7th August 1835, Sloan's Code, page 18.
2. S. U. Proceedings, 9th October 1843, Sloan's Code, page 20.
3. S.O., 15th February 1862, No. 242, Judicial Department.
4. G.O., 24th March 1868, No. 506, Judicial Department.
5. Board's Circular Order VI of 1869.
6. Board's Proceedings, 1st September 1870, No. 5543.
7. Board's Proceedings, 11th January 1871, No. 123.
8. G.O., 15th March 1872, No. 365, Judicial Department.
9. G.O., 14th April 1875, No. 850, Judicial Department.

In their Proceedings of 7th August 1835, the late Fauzdar Adalat ruled that "it is the duty of the Judge and not of the Magistrate to take charge of all unclaimed property, except strays, though it may not come specifically within the provisions of Clause 7, Section 16, Regulation III of 1802; and in answer to a question whether it is the Civil Judge or the Principal Sadar Amin who should take charge of the class of property in question, the late Court of Sadar Adalat held (9th October 1843) that the duties devolved on the officers who preside over the Subordinate Courts and Courts of Principal Sadar Amins.

Adverting to the provisions of the Regulation of 1802, the Government in the Judicial Department directed District Judges in 1862 to submit, in February every year, inventories from their own and the Subordinate Courts, of all unclaimed property in the form prescribed. This course was evidently followed up to 1868, when the Board, in consideration of the trifling value of property often found with travellers who die heirless on their way, ruled as follows:—

"The moveable property of a person dying intestate and without heirs is not an 'escheat,' neither does Regulation VII of 1817 apply to it. There being no heirs, the ownership vests in Government, and the Collector can receive the property and dispose of it on behalf of Government, though not authorized to do so by any special enactment. Articles of trifling value can be returned to the family (finder) if no claimant appears after three months' notice." This paper was simply recorded in the Judicial Department. The order was intended to cover the cases of property which was of too trifling a value to admit of the appointment of an Administrator by the Civil Court, but it was not communicated to the District Courts, and the result was that the Civil Courts continued to exercise the power vested in them by Clause 7, Section 16, Regulation III of 1802, in all cases brought to their notice, however small the value of the property was. Here began the clashing of authorities, and on a case of this nature being brought to the notice of the Board of Revenue, in 1871, they observed as follows:—

"The Board were aware of the difficulty now brought to notice when issuing their Circular Order † on the subject. If the Principal Sadar Amin wishes to take charge of the property, he should certainly be allowed to do so. It is only when the Courts do not choose to undertake the duty that the Revenue Department need discharge it." This necessitates a reference to the Civil Courts in every case of intestate moveable property, but no such reference is being made as a matter of fact, because the Board's Standing Order has not only not enjoined a reference to the Civil

† VI of 1869.

charge of the property, he should certainly be allowed to do so. It is only when the Courts do not choose to undertake the duty that the Revenue Department need discharge it." This necessitates a reference to the Civil Courts in every case of intestate moveable property, but no such reference is being made as a matter of fact, because the Board's Standing Order has not only not enjoined a reference to the Civil

Courts, but has authorized Collectors to dispose of it on behalf of Government, "when the Civil Court takes no action." Paragraph 1 of the order says: "It is the duty of Revenue officers to take charge of public property when requested to do so." By whom they are to be so requested, it is not at all clear. It cannot be by the Civil Courts, for, the Civil Courts get no information unless it be through the Revenue officers themselves. The intention of the order might be made clear.

While matters were in this state, the Government in the Judicial Department received, with reference to the Order of 15th February 1862, No. 242, a list of unclaimed property received in the District Court of Salem, and, in authorizing the Judge to sell the property, they passed the following order:—

"Many items here do not belong to deceased persons' estates, but were 'found' on the high road or otherwise. The Magistrate should not have sent the property in any one of these 47 cases to the Court, but have disposed of them under the Board's S.C.O. No. VI of 1869. In future, in all cases where an article found, or the moveable property of a deceased person, may be unclaimed for three months, and amounts in value to Rs. 50 or under, the Magistrates of Districts will, at the end of three months in each case, cause the property to be sold by public auction and carried to the credit of Government, it being of course open to Government to make restitution to the owners or heirs at any time on due proof of their interest in the matter.

"All live-stock and all perishable articles should be sold at the first eligible opportunity, and particular care should be taken to destroy at once all soiled and filthy clothes."

Again in G.O., 14th April 1875, No. 850, J.D., the particular attention of all Magistrates was called to the above Order, and they were directed not to send, to Civil Courts for custody, unclaimed property of less value than Rs. 50.

These orders refer to property found on the high roads, as well as to property of persons dying intestate, and according to them, Collectors or the Board of Revenue have nothing to do with either kind of property, whatever the value may be, although the Order of 1872 inadvertently remarks that the Salem Magistrate should have disposed of the property then under consideration under Board's Circular Order VI of 1869. A Magistrate has nothing to do with the Board's Circular Orders. It seems desirable to lay down whether it is the Collector or the Magistrate that should deal with cases of this nature, for, in the former capacity, he has to submit them for the orders of the Government in the Revenue Department through the Board of Revenue, and in the latter, he has to submit them to Government in the Judicial Department through the District Judge.

12. The Government of India desire that an annual list should be sent to them of all cases where the escheated property does not exceed Rs. 1,000 in value, and have fixed no minimum money limit for cases to be entered in the list. So far as moveable property of persons dying intestate goes, therefore, their attention may be drawn to—

- I. The provisions of the Madras Police Act saved by Section 66, Administrator-General's Act II of 1874.
- II. The provisions of Sections 62 and 63 of the same Act.
- III. The desirability of fixing a minimum money limit even for other cases to be inserted in the annual list, as it will otherwise become too unwieldy.

This proposal is made because the Government of India remark that their present instructions are given "in the absence of any Legislative Act of the Governor-General in Council regulating the disposal of real and personal estate escheating or lapsing," &c.

As matters stand, neither Collectors nor Magistrates have any legal power to deal with escheats of this kind, whereas the power of the Civil Courts has remained intact. Submitted, therefore, that the duty of dealing with this class of property be left to Magistrates, who will dispose of all cases not exceeding Rs. 50 in value themselves, and submit the rest to Civil Courts, in accordance with the orders of the Judicial Department quoted above.

13. When a man dies possessed of personal as well as real property, or only of real property, the duty of dealing with the latter devolves on the Revenue authorities. By Section 6, Regulation VII of 1817, the superintendence of escheats is vested in the Board of Revenue, who, after informing themselves fully of all property of that description, are to submit to Government their opinion as to the most expedient mode of disposing of the same, and in exercising this power, they act simply as agents and

in the interest of Government, to whom all escheats belong. The property is to be eventually "sold on the public account, or otherwise disposed of, as the Governor in Council may determine." In accordance with this provision of law, the Collector of Coimbatore submitted in January 1870, the case of a Native woman who died

G.O., 11th April 1870, No. 501, Revenue Department.

for the orders of the Governor in Council, leaving a thatched shed, valued at four annas." In submitting this case, the Board remarked—"It appears desirable that, if the law admits, Collectors should be authorized to dispose of such trivial cases without reference," but the Governor in Council, after due * deliberation, replied—"The Government do not deem it advisable that

* The draft order was passed by all the Honorable Members.

the law regarding escheats, which requires the sanction of Government in all cases, should be altered." A little later on in the same year, the Collector of Malabar submitted a case where the property † was worth about three rupees, and in so doing

† Lease right on a Paramba and a hut.

he requested that, as cases of this kind were of frequent occurrence in his district, he might be empowered to dispose of all cases not exceeding Rs. 100 in value. The Board reiterated their recommendation in this case also, but the Government, after full consideration, adhered to their former decision.†

† G.O., 28th April 1870, No. 596, Revenue Department.

that "until the law is altered, the present procedure must be followed." In dealing with another small escheat in Malabar in 1870, the District Judge of Tellicherry reviewed the law on the subject at some length, and, in disposing of the case, the Board remarked § that the Civil Judge's

view of the law was correct. According to it, Civil Courts are not to interfere with the real property of persons dying intestate, unless it forms part of the estate of the dying man. Even then, the Courts are restricted from interfering without a regular complaint being made by persons claiming title to it, and then on a regular suit being preferred. In May 1871, the Sub-Collector of Cuddapah submitted a case where a woman "died intestate and without heirs, leaving a ruined hut of the value of eight annas." In dealing with this case, the

G.O., 16th June 1871, No. 1071.

Government, after reviewing the law on the subject, passed the following general order:—

"In future, to save unnecessary correspondence, delay, and expense, the Governor in Council is pleased to determine that the Board of Revenue shall receive a general authority to dispose of such references in all unquestionable cases of intestacy and absence of claimants where the value of the property does not exceed fifty (50) rupees, an annual tabular statement being submitted of their operations under the order."

The legal difficulty, which was felt to be a serious one in 1870, was thus got over in 1871, and the same principle was extended by the Judicial Department to personal property also in 1872 as already noted. Board's Standing Order No. 279. This

Neither of these orders is embodied in the Board's Standing Order No. 279. This might now be done.

14. In making over the property * of a dancing girl who died heirless in Madras in 1876 to her sister, the Government proceeded † on the authority of a notification ‡ of the Government of India, dated 31st March 1873, No. 2189, which provides as follows:—"The effects of illegitimate persons dying intestate, which have already become escheats to the Government since

* Sale-proceeds of certain houses and other property.

† G.O., 2nd August 1876, No. 1576, Judicial Department.

‡ Page 743, Fort St. George Gazette, dated 16th April 1873.

the Indian Succession Act, 1865, came into operation, as well as those which may hereafter become escheats, shall, after deduction of the expenses incurred and the established proportion of the Crown's share, be distributed in conformity with the aforesaid Act." It is doubtful, judging from the portion of the correspondence printed with the above notification, which speaks of people of mixed blood, whether

Property of illegitimate persons and Crown's share in escheats.

it was rightly applied to the dancing girl's case in question. Certain classes of dancing girls have a distinct nationality such as Hindus, Muhammadans, &c., and are governed by certain special provisions of their respective laws, both in matters of succession and inheritance. Where the written law is defective, custom, which is respected by Courts, fills in the gap. However this may be, the point that deserves special attention in this connection is "the established proportion of the crown's share" alluded to in the notification. The Government took it as 10 per cent., in this case, following the table given by the Government of India in 1866 in respect of estates of persons of European extract. The rates vary as under:—

G.O., 29th May 1866, No. 835, Judicial Department.

			£					
When the proceeds are less than	500	...	...	...	...	...	...	1/10
Do. do. do.	1,000	...	...	...	...	...	...	1/8
Do. do. do.	5,000	...	...	...	...	...	...	3/8
Do. do. do.	1,000	...	...	...	...	...	...	1/2
Do. do. do.	10,000 and upwards	...	...	...	...	...	...	3/4

should these rates be adopted in all such cases.

§ Vide "Rules for the guidance of officers engaged in the Administration of the Revenue Department in the Lower Provinces of Bengal. Section VII, Escheats.

15. Difficulties having arisen in Bengal after the sale of certain real property as escheat, the following rule § was promulgated in that province:—

"With reference to the provision of the Law of Limitation (Act XI of 1871), the Board will never advise the Government to sell any such (i.e., unclaimed real) property until it has been in full possession of it for twelve years. Lands of any value which escheat to Government are usually sold (after settlement if necessary) as Government estates, forming a legitimate addition to the public revenue. Small patches of land in the neighbourhood of towns, or such escheats as shops, tanks and gardens, similarly situate, may, with the special sanction of Government in each case, be appropriated to local improvements."

These instructions seem to be judicious and might be adopted in this Presidency also.

16. "In the resolution of the Government of India, recorded in G.O., 6th June 1872, No. 681, it is laid down (with express reference to the sale of escheat land for the benefit of local funds) that Government land is not to be parted with save under the restrictions applicable to public money; and rules are accordingly laid down defining the conditions and powers of Local Governments in respect of the alienation of Government lands. Escheated lands fall under this category and must be disposed of in accordance with these rules." The above extract, which is taken from G.O., 19th May 1884, No. 657, may, it is submitted, be inserted in the new Standing Order.

17. There are special orders applicable to escheats in Malabar. In 1865, the sanction of the Government of India was obtained for crediting 10 per cent. of the sale proceeds of these escheat-lands for purposes of local improvements, such as roads, bridges, &c. The reason * of this concession was that the Government were bound to make provision for the due discharge of the obligation, which was incidental to proprietorship in the soil (which was forfeited to the Crown on the rebellion of Pychee Rajah in 1806 and on the extinction of certain old families, &c.), and which was therefore especially chargeable on the fund derived from the sale of that proprietary right. By G.O., 19th May 1884, No. 657, the above order was held to be applicable to all escheats in Malabar, and two recent cases of escheats were accordingly disposed of. In the case of one Moyen Kunhi Ramen Nair of Malabar, which went up to the Home Government in 1874, the Secretary of State decided, in the particular circumstances of the case, that a more liberal allowance should be made to the wife and

G.O., dated 11th February 1865, No. 295.

* Vide Government Order and letter to India, dated 22nd December 1864, Nos. 2304 and 2305.

G.O., 30th July 1874, No. 1392, Judicial Department.

A reference was intended to be made to the Government of India in this case, but it was never made (vide the Secretary's note in G.O., 23rd January 1882, No. 84, Revenue Department).

Alienation of escheat land.

Escheats in Malabar.

children of the deceased, and "that the

† *Vide* Honorable Mr. Carmichael's red-pencil note in G.O., 29th September 1882, No. 1047.

‡ *Vide* notes with the original of G.O., 19th May 1884, No. 657.

passed the following general order in regard to the disposal of escheats in Malabar:—
G.O., 9th September 1876, No. 1253, Revenue Department.

over the property to the natural heirs, where the amount, after payment of debts, funeral expenses, &c., does not exceed 500 rupees; where the amount is above 500 rupees, the matter should be reported to Government. This order does not expressly provide for the 10 per cent. deduction for local purposes. Perhaps it is not to be made in such cases; the intention might be made clear and the order embodied in the new Standing Order.

18. As to the prospect of any property becoming an escheat in Malabar, Mr. § *Vide* 5th Report, page 442.

of devising their lands to whom they please, but chiefly to pagodas, land seldom claim the right of adoption and the power reverts to the State for want of heirs; and in the opinion of Mr. Shephard, the Government Pleader, "the last member of a Marumakatayam tarward ¶ may, by a testamentary disposition duly made, defeat the claim of Attaladakkam ** heirs and a fortiori the claim of Government by escheat." The question, however, is one, he adds, on which undoubtedly opinions differ.

19. Besides property of persons dying intestate and without heirs, and property found on the high roads, which have been so far treated of in this note, the following other kinds of property also escheat to the Crown under certain circumstances:—

I. Hidden treasure.

II. Wrecks.

III. Property seized under the provisions of the Criminal Procedure Code.

IV. Property of certain classes of offenders under the Indian Penal Code and under Act XXV of 1857.

20. As to the first, the provisions of Act VI of 1878 apply. If after due notification the owner of such property is not discoverable, it becomes the property of the innocent finder, if the value does not exceed one lakh of rupees. If it exceeds that sum, it is at the disposal of the Crown.

* May 28, 1868, page 478. Prinsep's Code of Criminal Procedure, Section 523.

21. As regards II, the Government of Bengal, acting on the opinion of their Advocate-General, issued * the following order:—

"Wrecks are, in the first instance, to be retained by the salvors, who have a special property in them by way of lien for the salvago. It is illegal for the police to take salvaged wreck out of the possession of the salvors, though upon discovery of wrecked property in such possession, notice of the same should be given by the police to the Magistrate of the district. If the owners come forward, the matter will be one for adjustment between the parties. If the owners cannot be found, then, subject to the salvage claims, the wrecked property belongs to the State, which may sue for its recovery in the same way as the owner might have done. Where such a course is necessary, the Magistrate should give notice to the Collector who will take the necessary legal proceedings."

The definition of wreck and the procedure to be followed in respect of it, is given in

† VII of 1880.

lishes his claim to a wreck within one year, it belongs to the Crown (*vide* Victoria

17 and 18, Chapter 104, Sections 471, 475; *Victoria* 25 and 26, Chapter 63, Sections 52 and 53).

22. As regards III, attention is invited to Sections 87, 88, 523 and 529 of Act X of 1882. The first two sections relate to the property of a person absconding and the last two to property alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence. If the person in whose possession such property was found, is unable to show that it was legally acquired by him, it is at the disposal of Government. If the property attached under Sections 87 and 88 happens to be land paying revenue to Government, the attachment and sale of the same are conducted by the Collector of the district in the Bengal Presidency. No such order seems to have been issued here.

23. As to IV, Sections 61, 62, 121, 122, 126, and 127 of the Indian Penal Code apply. Sentence of forfeiture of property renders the offender incapable of acquiring any property except for the benefit of Government, until the sentence shall have been undergone. The effect of this provision in the Code is to combine for the benefit of the Crown the English doctrines of forfeiture and escheat. Forfeiture only took place in respect of property vested in the criminal at the time, but the law of escheat pursued the matter still further (*vide* Mayne's Commentary under Section 61, Indian Penal Code, 12th Edition). As to the effects of a forfeiture for the crime of a father upon the rights of a son and *vice versa*, please see the judgments quoted at pages 35 and 36, *ibid.* "The Crown, or its grantee, on forfeiture, will take the estate subject to all charges binding on the party, although voluntary, if there is no fraud." In *Godit Doss versus the Government*, it was held that judgment creditors having *bona fide* attachments on property, at the time that property became forfeited to the Crown under Act XXV of 1857, are entitled to priority over Government.

NOTE ON ESCHEATS.

* Res^d of 11-11-82

no 50-1454-63 J.D.

(C.N. 5539.)

A printed copy of
these notes is ~~for~~ filed
herein

* Pubd 23-5-83

no 740 J.D.

C.N. 5539

REVENUE DEPARTMENT.

No. 5539

From the Judicial Department

Dated 28th July

1884. No 1859.

FOR ORDERS.

The Government of India have ruled that on the occurrence of the escheat of estates which may have belonged to Hindus, Mahomedans or others to whom the Indian Succession Act does not apply, the claims of any persons who, except for the fact of illegitimacy, would have been entitled to succeed, or who for any reason have a moral, though not a legal, claim to consideration should be dealt with in a liberal spirit, and that such cases should in future be reported to the Govt. of India for final orders with suitable recommendations, save in cases where the escheated estate or property does not exceed Rs 1000 in value. In the excepted cases, the Local Govt is empowered to dispose of the property, subject to the submission

of an annual statement showing such cases. Subsequently, our representation grows this Govt that their powers with regard to educated estates have already been defined in the marginally quoted Regulations which provide full authority and instructions for Officers dealing with that class of property, the Govt of India have further ruled that in cases where the Local Govt has a pure discretion conferred on it by an enactment, it is incumbent on such Local Govt to exercise the discretion in accordance with any instructions which the Govt of India may think fit to issue in the matter, and that in view of the provisions of 16 & 17 Victoria Cap 95, Sec 27, and in the absence of any legislative Act of the Govt General in Council regulating the disposal of real and personal estate relating or relating for want of an heir or Successor.

* Letter of 6-5-84 no. 112970.

* Reg III of 1902 Sec 16 Cl 3
Reg VII of 1916 Sec 6.

India's letter of 2.8/6/84 no 87670
in G.O. 2.8/7/84 no 1859 J.S.

2
it is desirable that the orders of the Government of India should be taken in the class of cases referred to.

2. In being thus obligated, our Govt that the requisition of the Govt of India should be complied with, it becomes necessary to examine whether the orders on the subject already in force in this Presidency need any modification and if so to what extent. Further some of the orders having ^{emanated} from the Revenue Dept, some from the Judicial and some from the Board of Revenue, they are somewhat conflicting ^{using} ~~conflicting~~, and the Board's Standing Order on the subject is defective. The present difficulty may, it is thought, be taken ^{collecting} ~~recollecting~~ the orders ^{together} and issuing a new Standing Order. The following note is submitted

chiefly with this object.

3. The laws, decisions and orders on the subject divide themselves

under two main heads: viz —

- I What Constitutes an escheat
- II How and by whom should it be dealt with.

4. As to the first question how the guiding legal maxim is — "Quicquid nullius est, est domini Regis", i.e. that which is the property of nobody, belongs to our Lord the King. It is a general rule according to English law that whenever the owner, or person actually seized of lands, dies intestate, and without heirs, the land goes to the Crown, or in the subordinate words of the fee, "by escheat." (Procur legal maxim).

5. By 1847 Victoria Cap 9 Sec 27, all forfeitures for crimes of any real and personal estate whether or happening for want of an heir or successor, all property devolving as bona vacantia for want of a rightful owner, was declared to belong to the East India Company.

FOR ORDERS

2/

x Reg II of 1802 as modified
by Act III of 1873 (Madras).

10 3

in trust for Her Majesty for the service of the Govt of India, provided that the Governor General in Council shall have power to make any grant or disposition of that property in favour of any relation or connection of the person from whom the same shall have accrued. By 21 and 21 Vic Cap 106 Sec 39, the powers of the East India Company in this respect have been transferred to Her Majesty's Government.

6. Now as to the question what Constitutes an escheat which is involved in the law governing "Succession and inheritance" the British Legislature have laid down that the Mohammedan law in cases where the parties are Mohammedans, and the Hindu law in cases where the parties are Hindus, or any person having the force of law and governing the parties or property concerned, shall govern the rule of decision unless such law or custom has by legislative enactment been altered or abolished.

abolished.
The provisions of the Hindu and
Malomundau laws on the subject
will, therefore, be strictly noticed
here.

7. The Hindu Law declares that
failing all the claimants especially
enumerated, the property of all
but Brahmins vests by escheat in
the King as ultimate holder and
that the estate of a Brahmin
descends eventually to Brahmins
or learned priests, but never as
escheat to the King. The Privy
Council, however, have decided
that on the death of a Brahmin
without heirs, the sovereign power
in British India is entitled to take
his estate by escheat, subject to
the trusts and charges previously
affecting the estate. Vide. Mayne's
Hindu Law Secs. 504 & 505 (1890)
and Norton's Leading Cases pp. 588 & 591.

When the Crown takes by escheat
for want of heirs, it has the same
right to impeach an unauthorized
alienation by a widow, which the
heirs of the husband (had there been any)

* Sutta P.C. 9. 417, Collector of
Marulipatam vs C. V. Naraya
-appa.

* vide the opinions of Messrs
Hardley & B. C. Sullivan printed
in 80. 11th Sept 1877 No. 2696.

8 Moores J.A. p. 529
4 20 20 p. 246
Mayne's H.L. Sec 536 & 505.
Norton's L.C. p. 599.

P. Co. 2. 14 Sutta pp. 416.
* Norton's L.C.

L. Rep. 3 J.A. 92 of 1876;
J.L. Rep. I. Cal 391;
Bramon's Digest p. 465;
Mayne's H.L. Sec 505.

would have had the obligation
to maintain dependant members
of the family extends even to the King
when he takes the estate by escheat
or by forfeiture.
Whatever descent prevails, and
even where the State as the ultimate
holder takes by escheat, the duty of
certain ceremonial performances
to the deceased is still enjoined by the
Mitakshara.

When a Zamindar alienates
a portion of his estate to his illegiti-
mate children or others and gives
the grantee his heirs and assigns
circumstances where the Zamindar
or his successors cannot legally
recover the property, the Crown
is by the general prerogative entitled
to take it subject to the payment
of the rent reserved, and there is no
authority upon which the power
of taking by escheat can be attributed
to the Zamindar. The principles of
English feudal law are inapplicable
to a Hindu Zamindar. It follows

from this decision that whereas
as portion of as permanent settled
estate in the Madras Presidency
has been alienated to others from

whom the Zamindar or his
successor ~~and~~ legally ~~trained~~
from recovering the property
reverts to the Govt if the grantee
dies heirless. Not a single case
of this nature appears to have
been reported to Govt. a libel
because the local revenue officers
are not aware of the law in the subject
or they have no means of acquiring
themselves with details of this
nature.

It has been held in the N.W.
Provinces that property held
by a Zamindar or a Mahant
in perpetuity, reverts to the
Govt on failure of legal heirs.
N.W.P. Report 1855 Case 30
And also cited by the Crown claiming
lands as an escheat, which are
admittedly in the possession of
the party claiming as heirs.

Legal opinions printed in
Court of Wards Nov 22/5/71
no. 2104

P.C. App from Ben H.C.
17th July 1868. Normandy's
Wigs & and Maynes H.L. Sec 505

XI Beng L.R. 1873 p 144;
Normandy's p 229.

the onus is on the crown to show
that the last proprietor died without
heirs. It is open to the defendant
in such a suit to set up any fact
ius tertii to bar the claim of
the Crown. In a case where
the Crown waived its rights in
respect of an escheated property
the waiver is held to be irrevocable
under the Mahomedan Law
on failure of all the persons enu-
merated as heirs, residuaries, or
disjoint kindred, the property reverts
to the public Treasury. The law or
the usage which inflicts forfeiture
of or affects rights on change of
religion or loss of caste has ceased
to be enforced under Sec 1 Act XXI
of 1850. It has generally been held
however, that the property earned
by a male apostate since the time
of his apostasy, belongs to the Crown
under Act (1881) XI, 11, 80,
82, and 155; also Sec 307 Ben Reg
V of 1899.

made & sworn in 1800 is under the Indian Succession Act of 1865, if a man dying

intestate, leaves no widow, no

lineal descendants, or kindred, the property goes to the Crown

(See 28), subject of course to the debts of the deceased (Statutes Succession Act 17). When

the illegitimate son of an Englishman by a Mahomedan woman,

died intestate, leaving no widow, no mistress and no illegitimate children, it was held that his

property escheated to the Crown in default of heirs. I Reg. B.C. 87

(16). Norunda's H. 18. The Madras High Court held that a claiming girl is no heir to her deceased sister's property.

10. Property which comes before Collectors for disposal under orders of three kinds: viz.

I Personal property of persons dying intestate and without heirs.

II Real property of do. do.

III Unclaimed moveable property found on high roads.

As regards I, clause 7, Sec 16.

to the property has appeared, he is to take the requisite measures for the safe keeping of the property and advertise for all heirs, and if no heir appears within 12 months he is to make an inventory of the property, and transmit it, together with a statement of the circumstances of the case to the Govt in Council for his orders.

8. 2nd Aug 1876 no. 1576 J.D.

* When a Dist Judge has received information that a person has died intestate, leaving personal property, and that no claimant to the property has appeared, he is to take the requisite measures for the safe keeping of the property and advertise for all heirs, and if no heir appears within 12 months he is to make an inventory of the property, and transmit it, together with a statement of the circumstances of the case to the Govt in Council for his orders.

Reg III of 1802 prescribes the procedure to be followed by District Judges by Section 3 Reg. III of 1829, the rules contained in clauses 3, 4, 5, 6 & 7. Sec 16 of the above Regulation relating to the estates of Hindus dying intestate, are declared equally applicable to the cases of Hindus dying and leaving wills, wills having no legal force except where they are in accordance with the provisions of the Hindu Law. As regards moveable property of persons dying intestate within the town of Madras, Sections 76 and 77 of the Madras Police Act VIII of 1867 lay down that when such property is under Rs 200, it may be taken charge of by the Police and delivered, under orders of the Commissioner of Police to the party claiming to be entitled thereto. Letters of administration need not be taken out in this case, & these sections have been expressly saved by Sec 66 of the Administrator General's Act II of 1874.

If the sum exceeds Rs 200, the Administrator General is to take charge of the property, which if not claimed for 15 years will be carried to the account and credit of the Government of India for the general purposes of Government". vide Sections 62 and 63 Act II of 1874 Local. Section 61 of the same provides, that District Judges should take charge of property of persons, other than a Hindu, Mahomedan, or Buddhist, or a person exempted under the Indian Succession Act, 1865, Sec 332, who die leaving assets within the limits of their jurisdiction, and that they should report the circumstances to the Administrator General. Appanatty Collector has nothing to do with cases of this sort. It is not clear whether the Govt of India contemplate a reference to them.

1

Re: Immovable property.

· Bro 7th Augst 1835, Sloan's code.
 · Bro 9th April 1843 - D.O. p 20
 15th Feb^y 1862 no. 242 J.D.
 24th March 1868 no. 606 J.D.
 29th C. O. VI: 21/1869 E. 21. D. 2
 anti Bro 1/21/1870 no 5543
 14th April 1871 no 5543
 20th Bro 11th Jan^y 1871 no. 123
 15th March 1872 no. 365 J.D.
 14th April 1875 no. 550 J.D.

in the cases falling within the jurisdiction of the Administrators.
Girdal also, his powers under the Act, ^{however} are complete, and do not require a reference to the Court.
In regard to the disposal of immovable property of persons dying intestate in the Mofussil, provision of the Act, with reference to the marginally quoted authorities, collected from the Civil Court, the Collector of the District, or the District Magistrate should deal with it.
Further evidence of 7th Aug. 1835, the late Dargah Ruler ruled that "it is the duty of the Judge and not of the Magistrate to take charge of all unclaimed property, except straggles, though it may not come specifically within the provisions of clause 7 Sec 16 Reg III of 1802, and in answer to a question whether it is the Civil Judge or the Principal Sadar Amin who should take charge of the class of property

in question, the late Council of
Sadat Adalat held (9th Oct 1843)
that the duties attached to, devolved
on the Officers who preside over
the Subordinate Courts and Courts
of Principal Sadat Amirs.

Adverting to the provisions of
the Regulation in question, the Govt
in the Judicial Dept directed
District Judges in 1862 to submit
in February every year inventories
from their own and the Subordinate
Courts of all unclaimed property
in the form prescribed. This course
was uniformly followed up to 1868
when the Board, in consideration of
the trifling value of property of the
found with travellers who died dur-
ing on their way, ruled as follows:-

"The movable property of ad-
persons distinguished and distinction
there is not an exception" next then
does Regulation VII of 1817 apply both
where there are heirs, the ownership
vests in Govt, and the Cols can receive
the property and dispose of it on
behalf of Govt. Articles of trifling

the Council, 21.1.1868

21.1.1868

21.1.1868

21.1.1868

S.O. 154 Jale 1862 no. 242 J.D.

21.1.1868

21.1.1868

21.1.1868

21.1.1868

Board no 23/1/68 no 543

" 28/2/68 no. 142.6

" C.O. VI of 1869 of 42-69

no 771.

" though not authorized to do so by
any official enactment.

S.O. 14.11.1868 no. 506.

Board no 11.4 January 1871
no. 123

* VI of 1869

value can be returned to the family
(finder?) if no claimant appears
after three months notice. This
paper was simply recorded in the
Judicial Department. The order
was intended to cover the cases of
property which was of too trifling
a value to acquire by the appointment
of an Administrator by the
Civil Court, but it was not
communicated to the District Courts, and
the result was that the Civil Courts
continued to exercise the power vested
in them by Sec. 16 of Reg. III of 1802 in
all cases brought to their notice,
however small the value of the property
was. Here began the glaring injustice
- notice, and on a case of this nature
being brought to the notice of the Board
of Revenue in 1871, they observed as
follows:-
"The Board are aware of the
difficulty which is brought to notice when
making their Civil order on the
subject. If the Principal Sadat
Amir wishes to take charge of the

property, he should certainly be
allowed to do so. It is only when
the Courts do not choose to
undertake the duty that the Revenue
Department must discharge it.

This necessitates a reference to
the Civil Courts in every case
of immoveable property,
but no such reference is being

made as a matter of fact, because
the Board's Standing Order has not only
enjoined a reference to the Civil

Courts, but has authorized Collectors
to dispose of their property of goods,
when the Civil Court takes no action.

Para 1 of the order says - "It is the
duty of Revenue Officers to take
charge of public property when
requested to do so by whoever
they are so requested it is

not at all clear. It cannot be
by the Civil Courts, for the Civil
Courts get no information, unless
it be through the Revenue Officers
themselves. The intention of the
order might have been made clear.

502 ... 242 ... 502

S. A. 154 March 1872 no 3657D.

While matters are in the state, the
Govt. in the Judicial Dept. received
with reference to the order of 15th Feb 1862
no. 242 a list of unclaimed
property received in the Court, and
in authorizing the Judge to sell the
property, they passed the following

order -
"Many items here do not belong to
deceased persons estates, but are
found on the high road or otherwise.
The Magistrate should not have sent
the property in any one of these cases
to the Court, but have disposed of them
under the Board's S. C. O. no. 11 of 1869."

In future, in all cases where an
article found, or the moveable property
of a deceased person, may be unclaimed
for three months, and amounts in value
to Rs 50 or under, the Magistrate of
Districts, will at the end of three months
in each case cause the property to be
sold by public auction and carried
to the credit of Government, it being
of course open to Govt. to make
restitution to the owners or heirs at any

time in due proof of their interest
in the matter.

All lime-stone and all perishable
articles should be sold at the
first eligible opportunity, and
particular care should be taken
to destroy all other all sorts and
filthy clothes.

This order refers to property
found on the high roads, as well
as to property of persons dying
intestate. It is desirable to lay
down whether it is the Collector or
the Magistrate that should deal
with either kind of property, for
in the former capacity ^{has to} ~~submits~~
the cases for the orders of the Govt.
in the Revenue Dept through the
Board of Revenue, and in the
latter capacity ^{has to} ~~submits~~ them
to the Judicial Dept through
the District Judge. The Govt of
India desire that a uniform list
should be sent to them of all cases
where the escheated property does
not exceed Rs 1000 in value, and
no minimum money limit is fixed
for cases to be entered in the list.

18
Attention is in this connection invited
to G.O. 14th April 1875 no. 850 J.D.
which calls the particular attention
of all Magistrates to the orders of
15th March 1872, and directs them
not to send to Civil Courts for
custody unclaimed property of less
value than Rs 50.

Referring to these orders in
the Judicial Dept, Collector or the
Board of Revenue have nothing to do
with unclaimed immovable property
of whatever value, although the
Judicial order of 15th March 1872
unadvertently ^{perhaps} ~~states~~ that the Salub
Magistrate should have disposed
of the property then under consideration
under Board C.O. II of 1869. A
Magistrate has nothing to do with
the Board's Circular Order.

12. So far as movable property
of persons dying intestate goes, therefore,
the attention of the Govt of India may
be drawn to.

I the provisions of the Madras
Police Act issued by Sec 66 Imperial
Act II of 1874 (Administrator Genl's Act).

It the provisions of Sections
62 and 63 of Act II of 1874

This proposal is made
because India says that its
instructions are given
in the absence of any Legislative
Act of the Governor General in
Council regulating the disposal
of real and personal estate
indicating or defining the
legal
Collators have no power
to deal with estates of this kind
whereas the power of the Civil Courts
has remained intact in this respect
submitted therefore that Boards
S.O. 279 be altogether struck out,
and the duty of dealing with this class
of property be left to the Magistrates
who will dispose of all cases not
exceeding Rs 50 in value themselves
and submit the rest to the Civil
Courts. India might also be
asked to fix a minimum money
limit of cases to be inserted in the
Annual List, as otherwise the
list may become too long.

6.
Re: Real Property.

13. When a widow dies possessed of her own
as well as real property, not only of
real property, the duty of dealing with
the latter devolves on the Revenue Authorities.
By Sec. 6, Reg. II of 1877, the Super-
intendence of estates is vested in
the Board of Revenue, who, after
informing themselves fully of all
property of that description, are to
advise to Govt. their opinion as to
the most expedient mode of disposing
of the same, and in exercising this
power they act simply as Agents and
in interest of Govt. to whom it belongs.
The property is to be eventually
"sold for the public account, or
otherwise disposed of, as the Governor
in Council may determine." In
accordance with this provision of law,
the Collector of Coimbatore submitted
in January 1870
for the orders of the Governor in Council
the case of a native woman who died
intestate and without heirs, leaving a
"katched shed, valued at 1/2 annas".
In submitting this case, the Board
remarked "It appears desirable that

S.O. 11th April 1870 no. 501112

if the law admits, Collectors should
be authorized to dispose of such
trivial cases without reference,
but the Governor in Council after
due deliberation replied - "The Govt
do not deem it advisable that
the law regarding estates, which
requires the sanction of Govt in
all cases, should be altered."
A little later on in the same year
the Collector of Malabar submitted
a case where the property was worth
about three rupees, and
in so doing he requested that as
cases of this kind were of
frequent occurrence in his District,
he might be empowered to dispose
of all cases not exceeding Rs 100
in value. The Board reiterated
their recommendation in this case
also about fixing a monetary limit,
but the Government after full
consideration advised to their
former decision. The Honble
J. D. Sin with whom others concurred
expressed the opinion that "until
the law is altered, the present pro-
cedure must be followed". In

* The draft order was passed
by all Honble Members

* Case right on at Parumba
and a Ruth

G.O. 28th April 1870 No. 596 N.D.

2
dealing with another small estate
in 1870,
in Malabar, the District Judge of
Tollycherry reviewed the law on the
subject at some length and attention
is solicited to the correspondence
printed in the Board's Proc. of
1st Sept 1870 No. 5543 B which a
copy is put up on the Board's re-
-marked that the Civil Judge's
view of the law was correct. According
to it, Civil Courts are not to interfere
with the real property of persons
dying intestate, unless it forms part
of the estate of the dying man. Even
then, the Courts are restricted from
interfering without a regular com-
-plaint being made by persons
claiming title to it, and then only a
regular suit being preferred.
In May 1871, the Sub Collector of
Cuddalore submitted a case where
a woman died intestate and without
leaving a ruined hut of the
value of eight annas. In dealing
with this case, the Govt. passed

revising the law on the subject,
based the following general order:-

"In future, to save unnecessary
correspondence, delay and expense,
the Governor in Council is pleased
to determine that the Board of Revenue
shall receive a general authority
to dispose of such references
in all unquestionable cases of
interlay and absence of claimants,
where the value of the property
does not exceed Rs. 500. Rules,
an annual tabular statement
being submitted of their operations
under the order."

re: real property
The legal difficulty which
was felt to be ^{a serious one} ~~in~~ ⁱⁿ
1870, ~~with reference to the~~
was then summarily disposed of
in 1871, ~~and the same principle was applied~~
and the same principle was ^{extended by the Just Dept.} applied
to personal property ^{also} in 1872 as
already noted. Neither of these orders

is embodied in the Board's S. O. 279. This might now be done.

14. In ^{making over} disposing of the property
of a dancing girl who died heirless
in Madras in 1876, the Govt. proceeded

S.O. 164 June 1871 no. 1071

S.O. 15/3/72 no 3657D

x Sale proceeds of certain houses
of the property

* S.O. 2nd Augt 1876 no. 15768D

Page 743 of S.O. 1873
16th April 1873

on the authority of a Notification
of the Govt of India of 31st March
1873 no 2187 which runs as follows:
"The effects of illegitimate persons
dying intestate, which have already
become escheats to the Govt since the
Indian Succession Act, 1865, came
into operation, as well as those which
may hereafter become escheats; shall
after deduction of the expenses incurred
and the established proportion of
the Crown's share, be distributed
in conformity with the aforesaid Act."
It is doubtful, judging from the
portion of the correspondence printed
with the above Notification, which
apparently speaks of people of
mixed blood, whether it was
rightly applied to the dancing girls
case in question. Certain classes
of dancing girls have a distinct
nationality such as Hindus, Luahs,
-Midas etc, and are governed by
certain special provisions of the
respective laws, both in matters of
succession and inheritance.
where ^{written} the law is defective, custom

which is respected by Courts, bills, &c. in the gaps. However this may be, the spirit that deserves special attention in this connection is "the established proportion of the Crown's share" alluded to in the Notification. The Govt took it in the ^{as} ~~in the case~~ 40 per cent in this case, following the table given by the Govt of India in 1866 in respect of estates of persons of European extraction. The rates may be under:-

80. 29th May 1866 no 835 J.D.

When the proceeds are less than	£ 500.	—	$\frac{1}{10}$
do do do	1000	—	$\frac{1}{8}$
do do do	5000	—	$\frac{1}{6}$
do do do	10000	—	$\frac{1}{5}$
do do do	10000 & upwards	—	$\frac{1}{4}$

Should these rates be adopted in all such cases? }
 15. Difficulties having arisen in

Nuzal after the sale of real property as escheat, the following rule was promulgated in that Province.

* vide Rules for the guidance of Officers engaged in the administration of the Rev Dep't in the lower Provinces of Nuzal. See VII Escheats.

With reference to the provision of the law of limitation (Act II of 1871), the Board will never advise the Govt to sell any such (i.e. unclaimed real)

& from Act XV of 1877 clause 142 Schedule II. vide also Sec 14 of Act VII of 1817 which allows assigned persons to sue.

80. 19th May 1884 no. 657 para 2.

14
 property until it has been in full possession of it for twelve years. Lands of any value which escheat to Govt are usually sold (after settlement if necessary) as Government estates, forming a legitimate addition to the ^{public} Revenue. Small patches of land in the neighbourhood of towns, or such escheats as shops, tanks and gardens, similarly situated, may with the special sanction of Govt in each case, be appropriated to local improvements."

These instructions seem to be judicious and might be adopted in this Presidency also.
 16. In the resolution of the Govt of India recorded in 80. 6th June, 1872, no 687, it is laid down (with express reference to the sales of escheat land for the benefit of local funds) that Govt land is not to be parted with unless under the restrictions applicable to public money; and rules are accordingly laid down defining the conditions and powers of Local Governments in respect of the alienation of Govt

lands. Escheated lands fall under
two categories and must be disposed
of in accordance with these rules.
The above which is embodied in
G.O. 19th May 1884 no. 657 may be
inserted in the new Standing Order
on escheats.

17. There are special orders
applicable to the escheats in Malabar.

In 1865, the sanction of the Govt of
India was obtained for creation
in pursuance of the sales proceeds of
these escheat lands for purposes
of local improvements, such as
roads, bridges &c. The reason
of this concession was that the
Govts were bound to make pro-
-vision for the due discharge
of the obligation, which was inci-
-dental to proprietorship in the
soil, (which was forfeited to the
Crown on the rebellion of Pychee
Rajah in 1806 and the extinction
of certain old families &c), and
which was therefore especially
chargeable on the funds derived

Escheats in Malabar.

G.O. 11th Feb 1865 no. 295.

vide G.O. & letter to India d/
22nd Dec 1864 no 230402305.

G.O. 30th July 1884 no. 1392 J.D.

A reference was intended to be made
to the G. of I in this case, but it was
never made. Vide the Secy's note
in G.O. 23rd Jan 1882 no. 84 J.D.

* Vide Hon. Secy's note in G.O. 29th Sept 1882 no 10147

vide notes with the original of
G.O. 19-5-84 no 657.

from the sale of that proprietary
right. In paragraph 3 of G.O.
19th May 1884 no. 657, the Govt
evidently regarded the above order
as applicable to all escheats in
Malabar, and accordingly disposed
of two recent cases of escheats.
In the case of one Moyan Kunhi
Ramon Nair of Malabar which went
up to the Home Govt in 1874, the
Secretary of State decided in the
particular circumstances of the case
that a more liberal allowance should
be made to the wife and children of
the deceased and that the surplus
should be applied to promote some
work of public utility in the locality
where the deceased was resident. The
principle of this order was subse-
-quently extended to a few similar
cases by this Govt, but the order is not
one of general applicability. In
1876, the Govt passed the following
general order in regard to the

disposal of escheats in Malabar.

"In future, in all cases of escheats in Malabar arising from the absence of legal heirs, the Board are empowered to make over the property to the natural heirs, where the amount, after payment of debts, funeral expenses, &c, does not exceed 500 Rs; where the amount is above 500 Rs, the matter should be reported to Government." This order does not expressly provide for the ten per cent deduction for local purposes. Perhaps it is not to be made in such cases; the intention might be made clear, and the order embodied in the new Standing Order which ^{may} now be issued.

18. As to the prospect of any property becoming an escheat in Malabar, Mr Thackeray says that "as the jalmikars claim the right of adoption, and the power of devising their lands to whom they please, but chiefly to Pagodas, lands seldom revert to the State for want of heirs;" and in

80. 9th Sept 1876 no. 12 S. 2 R. 2

x vide 5th Report p. 442

* See also the Adv. Genl's Opinion in G.O. 23rd Feb 1883 no 1330 & in G.O. 18th July 1883 no 872 which differs.
* Family

x Disturbances

the opinion of Mr Shephard, the Govt Pleader, "the last member of a Marumakkathayam family, may, by a testamentary disposition duly made, defeat the claim of Attaladollam heirs and as fortiori the claim of Government by escheat." The question, however, is one, he adds, on which undoubtedly opinions differ.

19. Besides the property of persons dying intestate and without heirs, and property found on the high roads, which have been so far treated of in this note, the following other kinds of property also escheat to the crown under certain circumstances.

I Hidden treasure.

II Wrecks.

III Property seized by the British Government as prize of war under the provisions of the Civil Pro. Code.

IV Property of certain classes of offenders under the Indian Penal Code and under Act XXX of 1857.

As to I (hidden treasure), the provision of Act VI of 1878 apply. If after due notification, the owner of such property

is not discoverable, it becomes the property of the innocent finder if the value does not exceed one lakh of rupees. If it exceeds that sum, it is at the disposal of the Crown.

As regards wrecks, the Govt. of Bengal, acting on the opinion of their Advocate General, issued the following order.

"Wrecks are, in the first instance, to be retained by the Salvors, who have a special property in them by way of lien for the salvages. It is illegal for the Police to take saved wrecks out of the possession of the Salvors, though upon discovery of wrecked property in such possession, notice of the same should be given by the Police to the Magistrate of the District. If the owners come forward, the matter will be over for adjustment between the parties. If the owners cannot be found, then, subject to the salvage claims, the wrecked property belongs to the State, which may sue for its recovery in the same way as the owner might have done. Where

* May 20, 1868, page 478

Prinsep's Code of Civil Law
Sec 523

* VII of 1880.

17
such a course is necessary, the Magistrate should give notice to the Collector who will take the necessary legal proceedings."

The definition of wrecks and the procedure to be followed in respect of it is given in Secs 71 to 79 of the Indian Merchant Shipping Act 1880.

If nobody establishes his claim to a wreck within one year, it belongs to the Crown. Sec 17 and 18; 104 & 471, 475. Sec 25 & 26, 63, 52 and 53.

As regards attachment, it is invited to Secs 87 & 88, and 523 and 529 of Act X of 1882. The first two sections relate to the property of a person absconding and the last two to property alleged or suspected to have been stolen or found under circumstances which create suspicion of the commission of any offence. If the person in whose possession such property was found is unable to show that it was legally acquired by him, it is at the disposal of Government. If the property attached under Secs 87 and 88 happens to be

lands paying revenues to Govt.,
the attachment and sale of the
same are conducted by the Collector
of the District in the Punjab Provinces.
There is no such order since it has
been issued in this Province.

As to IV, Sections 61, 62, 121,
122, 126 and 127 of the Indian
Penal Code apply. Sentence of
forfeiture of property renders the
offender incapable of acquiring
any property except for the benefit
of Govt., until the sentence shall have
been undergone. The effect of this
provision in the Code is to combine
for the benefit of the Crown, the
English doctrine of forfeiture and
escheat. Forfeiture only took place
in respect of property vested in the
criminals at the time, but the law
of escheat pursued the matter
still further:—vide May's Commentary
under Sec 61 & 121 & 122. As to the
effects of a forfeiture for the crime
of a father upon the rights of a
son and vice versa, please see the
judgments quoted at pages 35 & 36 *ibid*.

Vide Ganesh Lal & Anni Khan
Benl. R. VIII p 82 &
Collett's Junior on the Prerogative
of the Crown Chap II Sec 1, p 219.

18
"The Crown, or its grantee, on forfeiture,
will take the estate subject to all
charges binding on the land, altho'
voluntary, if there is no fraud. See
Godt's case vs the Govt., it was held
that judgment creditors having
bona fide attachments on property,
at the time that property became
forfeited to the Crown under Act 25
of 1857, are entitled to priority over
Government."

20. The unwieldy length to which this
note has dragged itself is much
regretted; but while on the subject,
it became necessary to overhaul
all the books and authorities bearing
on escheat, and when the information
was all got together, it seemed best
to bring it on record in some shape
or other so that it may be of use for
future reference, though not altogether
required for present purposes. The
Honble Mr. Arncliffe intended to
take this matter up in dealing with
the Govt. of India Resolution of
November 1882, but he had no time
to do so. This note, if considered

* vide his note in G.O. 16th
Decr 1882 no 11421 N.D.

& printed in the Current paper.

useful, can be printed hereafter
for office use, as has been
sometimes done in similar
cases.

C.N. 5539
FOR ORDERS.

Note on receipts.

21-7-84

Regional. Print this note
9/12/84

Printed on - & Thorne
19

R
10.12.84

Madras
Govt of (1885) Madras.
REVENUE.

Issued

Recd.

Encl.

G.O., 21st January 1885, No. 93.

JANUARY.

Escheated Estates.

Papers from the Judicial Department regarding the disposal of —, communicated to the Board of Revenue with instructions.