

Revenue (1898) Department.

MISCELLANEOUS SERIES.

G.O., No. 3169

DATED 28th July 98

[Despatch Abstract.]

Coming to the Board of Revenue
opinion of the Honble the Advocate
General most cases point in
connection with the collection
of probate duty.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

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18 2,000-30-3-98.

Revenue (1898) Department.

CURRENT No. 5243

31/7/98

Order No: 3169 of 28th July 1898.

From
The Government Solicitor
Madras.

Communicated
Forwarded to the
Board of Revenue with reference
to B. P. No. 2219 of 3rd June 1898.

KD
27/7/98

31/7/98

No. 295.

under No. 2592
H 17-6-98

Dated 25 July
Received 26th
Registered 26th
Enclosures 2
Spare copies

To

The Board of Revenue,
S. R. } 27/7/98

T.P.K.
27.7.98

SUBJECT.

Forwarding with en-
closures, opinion of the Ad-
vocate-General, on certain
points in connection with the
collection of probate duty.

BACK PAPERS.

G.O.	No.	Department.	Date.
Mis	2592		17-6-98

FURTHER PAPERS

G.O.	No.	Department.	Date.

Revenue (1898) Department.

CURRENT No. 4140



The Board of Revenue,
Separate Revenue.

Encl. Mds. No. 2592.
Order

Forwarded to the Hon'ble
the Advocate General with the
request that he will be good
enough to favour Govt. with his
opinion on the points raised by
the collector of South Canara.

(By order.)

W. M. S. S. S. S.
as Under-secy to Govt.

Adlacamund, }
17th June 1898.

To

The Government Solicitor.

G.P.K.
18-6-98

Mis No. 2219

Dated 3rd June 1898.

Received 9th

Registered 11th

Enclosures 1

Spare copies.

SUBJECT.

Submitting to Govt. letter
from the Collector of South
Canara soliciting instructions
on certain points in connection
with the collection of probate
duty and requesting that the
opinion of the Advocate General
may be obtained thereon.

BACK PAPERS.

G.O.	No.	Department.	Date

FURTHER PAPERS.

G.O.	No.	Department.	Date

Ref onle No 1643 of 1897

South Kanara, Collector's Office
Mangalore 18th January 1898.

From

A. H. Pinbury Esq.

Ag. Collector of

South Kanara.

To

The Secretary to the
Commissions of Lath. Akari
and Separate Revenue
Madras.

Sir,

I have the honour to report the following
case for the orders of the Board.

Name of the Testator.	Date of his death.	Name of the Executor.	Value of assets on revaluation by Revenue Officers.	Amount of duty payable on value in Col. 4.	Duty of reval. paid in the court.	Balance payable.
1	2	3	4	5	6	7
Father P. C. Lewis	7-2-88	B. V. D. Rosario	4890 2 4	97 13	92	5 13

When the additional duty was found due the executor had died after distributing the assets and so the Roman Catholic Bishop of Mangalore who got the property in the case was called upon under clause 2 Section 320 of the Indian Succession Act to pay the deficient duty or show cause why it should not be collected from him. He has paid the amount but raised the following objections

(1)-(a)

(1) - (a). The funeral expenses and death-bed charges and the expenses of the probate should be deducted from the value of the assets and probate duty charged on the balance.

(b) Even if duty on these charges be now paid it has to be refunded under Section 19 B of the Court Fees Act subsequently.

(2) Clause 2, Section 320 of the Indian Succession Act is not applicable to deficient probate duty and consequently the assets in the hands of the Legatee cannot be followed.

(3) The claim is time-barred.

3. As to questions (1) a and b, in a former case these questions had arisen with regard to funeral charges and had been referred to the Local Government Pleader for opinion. He stated that under Section 179 of the Indian Succession Act the whole property of a testator vested in the Executor and that duty was payable on the whole property unless any portion of it was exempted from duty by a Special provision of law and that so far as he knew funeral charges had not been deducted in any case. With reference to (b) he stated that Chapter XXXIV of the Indian Succession Act treated of certain charges and the order in which they should be paid but funeral charges were not treated as "debts."

while Section 19 B of the Court Fees Act referred to "debts due from the deceased." He was therefore of opinion that funeral charges can neither be deducted from Assets in calculating Succession duty nor refund claimed on the charges when paid under Section 19 B. of the Act and Mr. Nicholson agreed with him. In the present case the two questions are raised not only with reference to the funeral charges but also to the death bed. and testamentary charges. The questions are of practical importance and arise frequently and as they are not free from doubt I request an authoritative ruling on (a) and (b) in respect of the 3 kinds of charges above mentioned.

4. Sections 279 and 281 provide for payment of certain charges before discharge of other liabilities and it seems to me that the words "other debts of the deceased" at the end of Section 281 are used not merely in contradistinction to the wages referred to in the two preceding Sections as well, and that all the charges mentioned in the 3 Sections 279 to 281 aforesaid were intended to be treated as debts of the deceased except probably testamentary charges about which see para supra. I have no doubt that death-bed charges are debts due from the deceased and although funeral charges cannot ^{strictly} speaking be so called yet looking to Section 279 of the Indian Succession Act.

Act, I am inclined to think that the Legislature meant to place both funeral and death bed charges on the same footing and that both may be allowed deduction for. But I do not think it was intended that these or any other charges or liabilities should be deducted from assets in calculating duty. The only case in which this can be done seems to be that of mortgage debts (vide the ruling of the Calcutta High Court reported at pages 158 to 156 of Sutherland's weekly reporter volume XVIII). In all other cases the course to be followed is in my opinion that laid down in Section 19B. of the Court Fees Act.

5. In the case of testamentary charges even the benefit of Section 19B. of the Court Fees Act is not, I conceive, allowable in that they consist principally of Succession duty itself and are clearly not "debts due from the deceased"

6. As to the 2nd Objection it does not seem to be of much weight. Under Section 280 of the Indian Succession Act, Succession duty is not only a lawful charge on the estate but takes precedence over other debts and Government may, I think, be considered under Section 282 of the Act, a creditor of the estate to the extent of the duty due within the meaning of

of clause 2 Section 320 of the Act. I beg to know if my view is correct.

7. The 3rd Objection on the score of limitation is also untenable. The period of limitation is 12 years from the testator's death and this has not run out, the testator having died on 7th February 1888.

8. Penalty in the case may be remitted as the additional duty if payable is small.

I have the honor to be.

Sir

Your most obedient Servant.

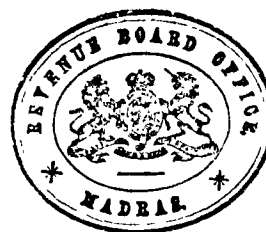
(Signed) D. Ananthiah

For Ag Collector.

(True copy)

R. W. H. W. W. W.
7.6.98

Ag Assistant Secretary.



Proceedings of the Board of Revenue

(Separate Revenue),

Dated 3rd June 1898.

Mis No. 2219.

Read letter[†] from the collector of South.

* copy. attached. Canara Ref on le No. 1643^{Ver.} of 97 dated 18th January 1898.

Resolution

Submitted to Government with the request that the opinion of the Advocate General may be obtained on the points raised by the collector

(True extract)

R. W. Hurley

7.6.98

Ag Assistant Secretary.

To
The Secretary to Government.
Revenue Department.
The collector of South Canara.

7628

1898
REVENUE DEPARTMENT
MADRAS
10-4-98

1008
EXHIBIT 1008
2
5243

(1898) Department

From

Ernest Barclay
Government Solicitor
Madras

To
The Secretary to Government
Revenue Department
Colacannund

N° 295

Dated 25th July 1898
Recd

Encls 2

Forwarded with enclosures with
reference to the endorsement of
Government & No: N° 2572 dated
17th June 1898 (Revenue).

Ernest Barclay
Government Solicitor

When given for copying _____
When copied _____
When examined _____
When signed _____

189

READ AGAIN G.O., No.
189

DATED

CURRENT No.
3

ENCLOSURES TO G. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BRING MEANT FOR DESPATCH
IN ORIGINAL.

N.B.—

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