Revenue (1898) Department.

MISCELLANEOUS SERIES.

G.O., No. 4912

DATED 13th December 98

[Despatch Abstract.]

Referring to the Advocate-General for favour of opinion papers &c: the fixing of the period of limitation for the recovery of duty due to Govt on Probates and Letters of Administration.

BACK PAPERS.

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

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
C.no. 563 of 99.							

Revenue (1898) Department.

CURRENT No. 8248

From The Secretary to the Commissioner of Salt, Abkari and Separate Revenue, Madras.

Order Endl. his No. 4912-7/13th Dec. 1898

Referred to the Advocate-General for favour of opinion.

Mis. **No.** 4694.

Dated 28th November 1898.

Received 2nd Dec.

Registered "

Enclosures —

Spare copies

SUBJECT.

Requesting Government to obtain a further opinion of the Advocate-General on the question of the period of limitation for the recovery of duty due to Government on probates and Letters of Administration.

To

The Govt Solicitor, with copies of G.Os no 1290 dated 26-b-93 judicial, ~~and~~ ~~1045 dated 3-5-94 judicial and~~ the Administrator-General's letter ~~xxx~~ dated 6-4-95 & ~~the Collector~~ B.P. no 2219 Mis dated 3-b-98 with its enclosure and the A-G's opinion thereon.

P.P. 3.12.98

Issd. 16-12-98

KD 10/12/98

* Under G.O dated G.O. 1045 3-5-94 Jud.

† Under G.O 3169 28-7-98

1A 3/12/98

BACK PAPERS.

G.O.	No.	Department.	Date.
	3154 28-7-93		
	1290		26.6.93.
Ann	1453	21—5—	94

FURTHER PAPERS.

G.O.	No.	Department.	Date.

0/18 4,000—18-10-98.

Revenue (1898) Department.

CURRENT No. 8248

From

The Secretary to the Commissioner of Salt Abkari and Separate Revenue, Madras.

Mis. No. 4694

Dated 28th November 1898.

Received } 2nd December 1898.
Registered }

Enclosures

Spare copies.

Endt: Mis.No.4912.

Order

Referred to the Advocate-General for favour of opinion.

(By Order)

Ag.Under Secretary to Government.

Fort St. George
13th Decr. 1898.

To

The Advocate-General, with copies of G.Os. No.1290 d/ 26-6-93 Judicial, the Administrator-General's letter d/ 6-4-94 and with B.P. No.2219 Mis d/ 3-6-98 with its encls. & Advocate-General's opinion thereon.

SUBJECT.

Requesting Government to obtain a further opinion of the Advocate-General on the question of the period of limitation for the recovery of duty due to Government on probates and letters of Administration.

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

500
6-6-98

REVENUE BOARD OFFICE MADRAS

Proceedings of the Board of Revenue

(Separate Revenue),

Dated 28th November 1898.

Mis. No. 4694.

Read letter from A.F.Pinhey Esquire, I.C.S., Acting Collector of South Canara, Current No.1872/Eng of 98, dated 15th November 1898, referring to the Board, for orders, the question of the period of limitation for the recovery of duty on probates and Letters of Administration.

Resolution:-

According to the opinion of the Advocate-General, communicated with Government Order Mis.No.3169, Revenue, dated 28th July 1898, the period of limitation for the recovery of probate duty is 12 years from the death of the testator. A similar opinion was given in para 5 of the Administrator-General's letter, dated 6th April 1894, disposed of in Government Order No.1045, Judicial, dated 3rd May 1894, Under Article 149 of the Second Schedule to the Indian Limitation Act, however, the period of limitation for the institution of suits by Government is sixty years, commencing from the time from which limitation would run against a like suit by a private person, and the late Advocate-General, dealing with cases in which more than 12 years had elapsed from the date of the ~~testator~~ death of the testator, remarked in para 10 of his opinion communicated with Government Order No.1290, Judicial, dated 26th June 1893, that the claims of Government were not barred, and that the duties and penalties prescribed by

Act XIII of 1875 were recoverable. In view of these differences of opinion, for which there is no apparent explanation, the Board requests that a reference may be made to the Advocate-General for a clear exposition of the law on the point. The Board takes this opportunity to suggest that the opinion of the Advocate-General may also be obtained on the question of the period of limitation for the recovery of deficient Court fees on Letters of Administration of estates of intestate persons.

(True extract.)

Acting Secretary.

1.12.98

To the Secretary to Government, Revenue Department.

Copy to the Collector of South Canara.

JUD. DEPT.
Min No 1
C.No. 573

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—again the following paper:—

G.O., dated 13th April 1893, Nos. 764, 765, Judicial.

ABSTRACT.—Passing orders on papers regarding the loss of revenue owing to under-valuation of estates of deceased persons by their executors.

READ—also the following papers:—

From the Government Solicitor, Madras, dated 2nd May 1893, No. 152.

ABSTRACT.—Forwarding the following opinion of the Advocate-General, dated 1st May 1893:—

[In the matter of G.O., dated 13th April 1893, No. 764, Judicial.]

OPINION.

In the matter of Lobo's estates, I have been informed by Mr. Wedderburn that he has filed appeals against the order of the Acting District Judge. I think no action should be taken by the Collector under section 64 of the Administrator-General's Act, 1874, until the decision of the High Court is known.

2. Act VIII of 1855, section 54, required the "Zillah Judge" to report without delay to the Administrator-General of the Presidency the death of any British subject dying intestate and leaving personal assets within the limits of such Judge's jurisdiction, "retaining the property under his charge" until probate or letters of administration be obtained.

3. This Act was untouched by the Indian Succession Act X of 1865, and the provisions of section 54 were practically re-enacted in the repealing Act XXIV of 1867, section 61, with which the terms of the present Administrator-General's Act II of 1874, section 64, are almost identical.

4. If the Legislature had intended to incorporate the provisions of section 239 of the Indian Succession Act in the Administrator-General's Acts of 1867 and 1874, they would not have commanded the District Judge to "retain the property under his charge" unless he appointed an officer under section 239 of the Indian Succession Act, 1865. The language of section 64 is peremptory and clear.

5. I confess that I do not know how the District Judge is to carry out the provisions of section 64 of the Administrator-General's Act in every case coming within those provisions unless the necessary information is given to him, or who is likely to be able and willing to give him that information.

6. In my opinion the words "shall retain the property under his charge" necessarily imply previous taking possession thereof and apply to every case coming within the provisions of the section.

Act X
of

7. I think that the assets of deceased persons and the Government revenue are sufficiently protected by section 190 of the Indian Succession Act X of 1865, sections 16 and 64 of the Administrator-General's Act II of 1874, and sections 19 E, 19 F and 19 G of the Court Fees Act VII of 1870, as amended by Act XIII of 1875, if those sections are properly acted upon and enforced.

8. To meet the case of possession being taken of the estate of a deceased person without probate or letters of administration, some provision similar to section 37 of the Statute 55, Geo. III, c. 184, or section 57 of the Statute 28 and 29 Vict., c. 104, might with advantage be enacted by the Legislature in India.

9. Where an attempt is made to obtain probate or letters of administration limited to so much of the estate as may remain uncollected, the District Court should direct notice to be given to the Government Pleader in order that the interests of Government may be protected. This was done lately by the Madras High Court in the matter of the goods, &c., of Damoodra Vyas deceased.

10. With regard to the cases of under-valuation of estates detailed in Mr. Brodie's letter of the 13th January 1893, I think the claims of Government are not barred and the duties and penalties prescribed by Act XIII of 1875 are recoverable.

(Signed) J. H. SPRING BRANSON,
Advocate-General.

From the Government Solicitor, Madras, dated 6th June 1893, No. 194.

ORDER—dated 26th June 1893, No. 1290, Judicial.

In paragraph 7 of the Proceedings of Government read above the Advocate-General was requested to express his views as to the advisability of moving the District Judge of South Canara to take action under section 64 of the Administrator-General's Act, 1874, in respect of the Lobo estate. It appears, however, from paragraph 1 of the Honorable Mr. Spring Branson's Opinion that the Administrator-General has filed appeals before the High Court and further action will accordingly be deferred as suggested. The Administrator-General will be requested to inform Government of the result of the appeals.

2. It was observed in paragraph 8 of the same Proceedings that Mr. Brodie, the Collector of South Canara, had suggested the amendment of the Administrator-General's Act, 1874, in view to—

(1) throwing upon the Collector the duty of reporting to the District Court all cases in which the assets of the deceased exceed Rs. 1,000;

(2) enabling the Collector to appear by counsel in Court for the protection of the revenue; and

(3) rendering it clear that the District Judge must under section 64 take charge of property as well as report the death of the proprietor to the Administrator-General.

With regard to the last suggestion, the Government concurs with the Advocate-General that the words used in section 64 necessarily imply taking possession of the property and that no amendment of the Act in this direction is therefore necessary. As to the other suggestions the Government is not convinced of the sufficiency of the present law to protect the revenue and the Government of India will be moved to take steps to amend the Act in the manner referred to above.

3. It also appears to the Government that legislation on the lines suggested in paragraph 8 of the Advocate-General's opinion is necessary and the matter will be brought to the notice of the Government of India.

4. The attention of the Honorable the Judges of the High Court will be invited to paragraph 9 of the Opinion and they will be requested to favour Government with their views thereon, and, if they have no objection, to direct District Courts to give

notice to the local Government Pleaders where an attempt is made to obtain probate or letters of administration limited to so much of the estate as may remain uncollected.

5. Paragraph 10 of the Opinion will be communicated to the Collector of South Canara who will take immediate steps for the recovery of duties and penalties and report the result of his action to Government.

(True Extract.)

Chief Secretary.

To the Honorable the Chief Justice, with C.L.
„ the Revenue Department.
„ the Board of Revenue (Separate Revenue).
„ all Collectors.
„ all District Judges.
„ the Administrator-General.
„ the Government Solicitor.

Exd. A. Raitt.

Govt. of {1893} Madras.

JUDICIAL.

Issued

Recd. *Encl.*

G.O., 26th June 1893, No. 1290.

JUNE.

Under-valuation of Estates of deceased Persons.

Directing that further action under the Administrator-General's Act, 1874, in respect of the Lobo estate be deferred until the results of the appeals to the High Court are known; that the High Court be requested, if there is no objection, to direct District Courts to give notice to the local Government Pleaders where an attempt is made to obtain probate and letters of administration limited to so much of the estate as may remain uncollected; that the Collector of South Canara take immediate steps for the recovery of duties and penalties in the cases of — detailed by Mr. Brodie; and that the Government of India be addressed regarding the amendment of the Administrator-General's Act, 1874.

Mis 2679

19-7-93

Administrator-General's Office.

Madras 6th April 1894.

From

H.G.Wedderburn

Administrator-General.

To

The Chief Secretary to Government,

Fort St. George.

Sir,

With reference to G.O.No.1290 Judicial dated 26th June 1893, I have the honour to inform Government that the appeals filed against the order of the District Judge in re the Estate of Lobo were decided on 3rd Instant.

The District Judge's order has been reversed and the parties are now as they were before the Order was passed.

The High Court suggested that the District Judge should appoint an Administrator pendente lite as the case had become "contentious", and held that the ~~the~~ Executor should be called upon either to take out Probate or to renounce and that if he renounced A.P. Lobo's application for Letters of Administration might be granted.

I have the honour to point out a mistake in para.1 of the G.O.. I filed an appeal for A.P. Lobo as his Advocate as Administrator-General I had nothing to do with this case. The power given by Section 16 of Act 11 of 1874 could not be used, as an application for Probate had been pending since 1883 by the Executor of the will (Manuel Lobo) and an application for Letters of Administration by A.P. Lobo was made in 1892 before I knew anything of the case.

I think the Collector should be directed to watch the proceedings through the Government Pleader to see that the duty is paid before 12 years elapse from the death of the Testator.

If

If the parties evade payment of duty and the appointment of a Receiver or Administrator pendente lite, possibly an application under Section 196 of the Succession Act might be made by the Administrator General, such an application would have to be made before 1895 to be of any use.

I have &c.

(Sd.) H.G.Wedderburn.

Administrator-General of Madras.

(True Copy).

Ag. Under Secy. to Govt.

Proceedings of the Board of Revenue (Separate Revenue) Madras, No.2219 Mis. dated 3rd June 1898.

Read letter from the Collector of South Canara Rev. on C. No.1643/Ver of 97 dated 13th 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)

(Sigd) R.M.Thurley,
Ag. Assistant Secretary.

To

The Secretary to Govt., Rev. Dept.
,, Collector of South Canara.

(True Copy)

Ag. Under Secy. to Govt.

Dist. 31
Cur. 563

1
REVENUE DEPT.
No. 3
563

Ref. on Cur. No.1643/ver of 1897

S. Canara Collector's Office

Mangalore 13th January 1898.

From

A.F.Pinhey Esqr.,

Ag.Collector of S.Canara.

To

The Secretary to the Commissioner of Salt,Abkari

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 as returned by Revenue Officers.			Amount of duty payable on value in Col. 4.			Duty already paid vide Court			Balance payable.		
1	2	3	4			5			6			7		
Father P.C.Lewis	7-2-88	Rt.Rev. Roque	4890	2	4	97	13	4	92	0	4	5	13	4

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) 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 ques-

tions

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 1(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 caculating 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 1(a) & 1(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 that section but to the charges 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.5 ~~supra~~ infra. I have no doubt that ~~de~~ death-bed charges are "debts due from the deceased" and although funeral charges cannot strictly speaking be also called yet looking to section 279 of the Indian Succession 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 153 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 19-B of the Court Fees Act.

5. In the case of testamentary charges even the benefit of section 19-B 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 clauses 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 &c.

(Sd) D.Ananthiah,

for Ag. Collector.

(True Copy)

(Sd.) R.H. Thurley

Ag.Asstt. Secretary.

(True Copy)

K. Ramayanbanker

Ag. Under Secy. to Govt.

1
REVENUE DEPT.
Book No. 4
Case No. 563

1
REVENUE DEPT.
Case No. 1

OPINION.

1. The first question raised in this case is whether funeral expenses and death-bed charges, and the expenses of obtaining probate should for the purposes of probate duty, be deducted from the value of the assets which constitute the deceased's estate.

Item 11 of Schedule 1 to the Court Fees Act (Act VII of 1870) provides for the payment of probate duty on "the amount or value of the property in respect of which the grant of probate .... is made". The duty is payable in the first instance on the gross value of the estate. See in the goods of Ram Chunder Doss, 18 W.R.153.

In my opinion neither funeral expenses nor death-bed charges, nor the expenses of obtaining probate can be deducted from the amount of the assets in calculating the amount of probate duty payable in respect of a deceased's estate.

2. The next question is whether a claim for a refund under section 19B of the Court Fees Act can be made in respect of funeral expenses and death-bed charges, or expenses of obtaining probate. Section 19 B of the Court Fees Act only applies to cases where "an executor or administrator had paid debts due from the deceased." Section 279 of the Succession Act provides that funeral expenses and death-bed charges are to be paid before all debts. Section 280 provides that the expenses of obtaining probate are to be paid next. Section 281 provides that wages for certain services are to be paid next, and then the other debts of the deceased. The word used in the Section dealing with funeral expenses and death-bed charges (S.279) are "before all debts", whilst the words used in the Section dealing with wages for certain services (S.281) are the other debts". There can, of course, be no question that wages due for the services mentioned in Section 281 of the Succession Act are "debts due from the deceased" within the meaning of Section 19 B of the Court Fees Act. Death-bed charges are also, in my opinion, debts due from the deceased within the meaning of the Section. I feel a difficulty with regard to funeral expenses, because the debt is not incurred until after the death of the deceased. The debt is a debt due from the estate of the deceased, and the words used in Section 19 B of the Court

Fees

Fees Act are "debts due from the deceased". On the whole, however, I have come to the conclusion that the Legislature intended to place funeral expenses and death-bed charges on the same footing, and that for the purposes of Section 19 B of the Court Fees Act both may be regarded as "debts due from the deceased".

3. As regards the expenses of obtaining probate, I think the view taken by the Acting Collector is correct. In my opinion a refund ought not to be allowed under Section 19 B in respect of these expenses.

4. As regards the question whether assets in the hands of the person who has received them can be followed under Section 320 of the Succession Act for the purpose of making up a deficiency in the probate duty paid, I think that Government is a creditor to the extent of the duty payable and remaining unpaid, and is entitled to follow the assets.

5. The objection raised in the present case that the claim is time barred, cannot be sustained. As the Acting Collector points out, the period of limitation is 12 years from the testator's death, and the testator died in 1888.

(Sd.) C. Arnold White
Advocate General.

Madras
21st July '90.

(True Copy)
(Sd.) Ernest Barclay,
Government Solicitor.

5

(True Copy)

W. Millingen Bourdillon
Ag. Under Secy. to Govt.

5
563

Rw

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READ AGAIN G.O., No. DATED
189 ,

CURRENT No.

ENCLOSURES TO G. No.

ORDER OF GOVERNMENT	A	A	A	A	A	A	A	
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STATEMENT WITH DITTO.								
PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH IN ORIGINAL.								

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