

(FILE NO. ^C~~2~~_E 2J.0F 1909)

1909.
GOVERNMENT
OF
EASTERN BENGAL & ASSAM.
JUDICIAL DEPARTMENT.

JUDICIAL - A

OCTOBER 1909

NOS. 5.6.

Amendment of rule 14 of the rules issued under section 13 of the
charitable Endowments Act, VI of 1891.

5 pages
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[FILE No. $\frac{C.}{E}$ 2J. OF 1909.]

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REFERENCES TO FORMER CASES.

Department, date, and Nos., or File No. and year.	Brief Title of File.
1. Home, A, May 1892, Nos. 22-31.	Draft rules under the Charitable Endowments Act.
2. Judl., A, June 1906, Nos. 14-22.	Forms and rules framed under the Charitable Endowments Act.
3. Ditto, A, Aug. 1906, Nos. 77-90.	Accountant General to be the Treasurer of Charitable Endowments.
4. Ditto, A, Mar. 1907, No. 1.	Instruction for publication in the Gazette of the annual list of properties vested in the Accountant General and Treasurer of Charitable Endowments Fund, Eastern Bengal and Assam.
5. Ditto, B, June 1909, Nos. 256-257. C (—1J). E

C-42.

REFERENCES TO LATER CASES.

Department, date, and Nos.	Brief Title of File.
Judl. A June 10 = 6-8 (C/31)	

(To be continued on back, if necessary.)

PAPERS OTHER THAN PROCEEDINGS.

I.—Printed.

Notes and orders.

II.—Not printed.

Nil.

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B— " (2) "

C— " (3) "

D— " (4) "

No. 6.—To the Government of India, Home Department, No. 3558J., dated the 24th September 1909.

NOTES.

JUDICIAL—A, OCTOBER 1909.

Nos. 5 & 6.

Amendment of rule 14 of the rules issued under section 13 of the Charitable Endowments Act, VI of 1890.

[PROCEEDINGS NO. 5 AND ENCLOSURES A—D.]—FROM THE SECRETARY TO THE GOVERNMENT OF INDIA, HOME DEPARTMENT, No. 1180, DATED THE 20TH AUGUST 1909.

Secretary,

We may consult the Accountant General unofficially in the first instance. The Legal Remembrancer will be consulted afterwards, if necessary.

31st August 1909.

H. K. BRISCOE.

Is the list of properties at page 2 of Judicial A, August 1906, Nos. 77-90 correct and up to date? If so, only No. 7 is affected by the the new proposed rule.

31st August 1909.

R. B. HUGHES-BULLER.

Secretary,

The latest list is at page 780 of the *Eastern Bengal and Assam Gazette*, dated the 14th April 1909. There appears to be only one addition, which will not be affected.

6th September 1909.

H. K. BRISCOE.

Accountant General.

Apparently this proposal affects you in a very slight degree. Will you favour us with your opinion on it before we consult the Legal Remembrancer?

7th September 1909.

R. B. HUGHES-BULLER.

Secretary,

I think that if a Fund is so important as to make the appointment of several administrators } A necessary, all these administrators should certify to the balance. There is not more than one ad- } A ministrator to any Fund in this Province except the Lady Mashenjie Sitabganj Fund. And as there are no securities appertaining to that Fund, we do not call for any acknowledgment. The accounts of this Fund are published in the Gazette and do not show any balance.

9th September 1909.

H. J. BREKENTON.

Hon'ble Legal Remembrancer,

For favour of advice on the proposals now forwarded by the Government of India.

15th September 1909.

R. B. HUGHES-BULLER.

Secretary,

As a matter of law all the administrators should be responsible for the correctness of the Funds, but as a matter of rule it may be convenient and not objectionable to allow one or two to certify the balances for the purpose in question.

17th September 1909.

E. G. DRAKE-BROCKMAN.

Hon'ble Legal Remembrancer,

Will you please advise whether the whole body of administrators would be jointly and severally liable for the balance, even-though they did not certify the same?

17th September 1909.

H. K. BRISCOE.

Under-Secretary,

I think they will be not exonerated from liability by allowing one or some to certify on their behalf. The rule may state this, if desired.

18th September 1909.

E. G. DRAKE-BROCKMAN.

Secretary,

Please see Legal Remembrancer's notes above and also (A) of Accountant General's note above. It would seem that both Accountant General and the United Provinces have good ground for their views, and a *via media* might be suggested that the administrators might be allowed to select certain of their number to certify the balance, only on the distinct understanding that they remain jointly and severally liable all the same.

18th September 1909.

H. K. BRISCOE.

His Honour,

Draft put up for approval. We have endeavoured to fortify ourselves with the Legal Remembrancer's opinion so far as possible, but that officer's remarks are somewhat halting!

23rd September 1909.

R. B. HUGHES-BULLER.

23rd September 1909.

L. HARR.

[PROCEEDINGS NO. 6.]—TO THE SECRETARY TO THE GOVERNMENT OF INDIA, HOME DEPARTMENT No. 3558J, DATED THE 24TH SEPTEMBER 1909.

[FILE NO. $\frac{C.}{E}$ 2J. OF 1909.]

GOVERNMENT
OF
EASTERN BENGAL & ASSAM.

JUDICIAL—A.

October 1909.

Amendment of rule 14 of the rules issued under section 13 of the Charitable Endowments Act, VI of 1890.

No. 170

FROM

H. G. STOKES, Esq.,

Offg. Deputy Secretary to the Government of India,

To

The Secy to the Govt of E.P. & C.P.
W. B. D. D.

Home Department.
Judicial.

Simla, the 22nd August 1909.

SIR

I AM directed to forward for

Letter from the Government of the United Provinces, no. 654, dated the 19th May 1909, and enclosure.

Letter to the Government of the United Provinces, no. 846, dated the 16th June 1909.

Letter from the Government of the United Provinces, no. 134-C, dated the 15th July 1909.

The Department of H. G. Stokes
a copy of the correspondence noted on the margin, and to request that the Government of India may be informed whether in

it is desirable that rule 14 of the rules issued under section

13 of the Charitable Endowments Act, 1890 (VI of 1890), should be amended in the manner proposed by the Government of the United Provinces.

I have the honour to be,

SIR,

Your most obedient servant,

H. G. STOKES,

Offg. Deputy Secretary to the Government of India.

No. 654, dated the 19th May 1909.

From—The HON'BLE MR. J. M. HOLMS, C.S.I., I.C.S., Chief Secretary to the Government of the United Provinces,

To—The Secretary to the Government of India, Home Department.

I am directed to refer the following matter for the orders of the Government of India.

2. In rule 14 of the rules issued under the Charitable Endowments Act (VI of 1890) by Government of India (Home Department) notification no. 1569 of the 24th October 1890, it is laid down that "the Treasurer of Charitable Endowments will demand and receive acknowledgments from the administrators of the correctness of the balances of the accounts when published."

3. In view of this rule the Treasurer of Charitable Endowments, United Provinces, demanded acknowledgments from each of the administrators of the following trusts at Lucknow :—

1. Balrampur Hospital Trust fund.
2. King's Hospital fund.
3. King's Poor House Trust.
4. New Charity fund.
5. Baillie fund.

The administrators of each of these trusts number 20. His contention was that "by the appointment of more than one administrator it was obviously intended that the administrators, other than the one who keeps the accounts, should have a share in the administration of the trust, and therefore be made responsible for the proper discharge of the trust, and exercise a check over the action of the administrators. It therefore seems necessary that each one of these administrators should certify to the correctness or otherwise of the accounts if necessary after satisfying themselves by examination, personal or otherwise, of the accounts maintained in the office of the administrator who keeps the account." It was suggested demi-officially to the Treasurer by this Government, to whom the matter was referred by the Chairman of the charities concerned, that it would be sufficient if the Chairman and Secretary of the administrators signed the certificates, and that it was unnecessary and would cause delay for each of a large body of administrators to sign a separate certificate. The Treasurer, however, adhered to his former interpretation of the rule.

4. The Legal Remembrancer to this Government, who has been consulted in the matter, is of opinion that where the scheme of administration provided merely that the Treasurer was to send the income to the administrators, the Treasurer's interpretation of the rule was admissible, but that where the scheme directed the Treasurer of Charitable Endowments to transmit the income to some particular one of the administrators, the Treasurer was not required to do more than to have an acknowledgment from the particular individual so specified. In each of the schemes of management settled for the funds in question the rule laid down is as follows :—

"The Treasurer of Charitable Endowments remits the income of the trust to the Chairman of the General Committee (the Commissioner) who deposits it in the Bank of Bengal, Lucknow Branch, under a separate account in connection with the trust."

5. As the exact intention of rule 14 is open to some doubt, the Lieutenant-Governor would be glad to be favoured with the instructions of the Government of India as to the interpretation which should be placed upon it.

6. A copy of the letter no. 236-XV., dated 3rd March 1909, from the Treasurer of Charitable Endowments (the Accountant-General), to the District Judge, Lucknow, is enclosed.

No. 236-XV, dated the 3rd March 1909.

From—F. J. ATKINSON, Esq., Treasurer, Charitable Endowments, United Provinces,

To—The District Judge, Lucknow.

Referring to your letter no. 95-XV., dated the 20th February 1909, I have the honour to refer you to rule 14 of the rules published in Government of India, Home Department notification no. 1569, dated the 24th October 1890, which runs thus:—

“ * * * The Treasurer will demand and receive acknowledgments from the administrators of the correctness of the balance when published.” By the appointment of more than one administrator it is obviously intended that the administrators, other than the one who keeps the account, should have a share in the administration of the trust, and therefore be made responsible for the proper discharge of the trust, and exercise a check over the action of the administrators. It seems necessary therefore that each one of the administrators should certify to the correctness or otherwise of the accounts if necessary after satisfying themselves by examination, personal or otherwise, of the accounts maintained in the office of the administrator who keeps the account.

2. I may remark that the figures printed in the local Government Gazette merely show the amounts received and paid by the Treasurer of Charitable Endowments; they do not show the actual balance of the fund, nor do they show the actual transactions, i.e., receipts from all sources and payments on all accounts. I would therefore request you to certify to the correctness or otherwise of the accounts of the five trusts in the accompanying form in communication with the Commissioner of the Division and Chairman of the General Committee of the Trusts or any other officer in charge of the accounts if necessary.

The five enclosed memoranda should now be returned duly certified to as correct.

No. 818, dated the 16th June 1909.

From—G. B. H. FELL, Esq., Deputy Secretary to the Government of India, Home Department,

To—The Chief Secretary to the Government of the United Provinces.

In reply to your letter no. 664, dated the 19th May 1909, I am directed to say that, in the opinion of the Government of India, rule 14 of the rules issued under the Charitable Endowments Act, 1890 (VI of 1890), as it stands at present, requires each individual member of a body of administrators of a trust to certify to the correctness or otherwise of the accounts of the trust.

No. 134-C., dated the 15th July 1909.

From—The HON'BLE MR. J. M. HOLMS, C.S.I., I.C.S., Chief Secretary to the Government of the United Provinces,

To—The Secretary to the Government of India, Home Department.

I am directed to acknowledge receipt of Mr. Fell's letter no. 848, dated 16th June 1909, stating that, in the opinion of the Government of India, rule 14 of the rules issued under the Charitable Endowments Act (VI of 1890) as it stands at present requires each individual member of a body of administrators of a trust to certify to the correctness or otherwise of the accounts of the trust. It was suggested in my letter no. 654, dated 19th May 1909, that this procedure is cumbrous and likely to cause unnecessary delay, more particularly in the case of those trusts which are administered by a large number of persons. It appears to the Lieutenant-Governor that it would be sufficient if the administrators named one or more of their body to acknowledge the correctness of their balances.

2. I am to suggest, for the consideration of the Government of India, that the rule might be modified accordingly.

Amendment of rule 14 of the rules issued under section 13 of the Charitable Endowments Act. Judl., 6.

No. 6.

No. 3558J., dated Shillong, the 24th September 1909.

From—R. B. HUGHES-BULLER Esq., I.C.S., Secretary to the Government of Eastern Bengal and Assam, Judicial Department,

To—The Secretary to the Government of India, Home Department.

I am directed to acknowledge the receipt of Mr. Stokes' letter No. 1180, dated the 20th August 1909, enquiring whether in the Lieutenant-Governor's opinion it is desirable that rule 14 of the rules issued under section 30 of the Charitable Endowments Act, 1890 (VI of 1890), should be amended in the manner proposed by the Government of the United Provinces.

2. It is suggested that if a fund is so important as to render the appointment of several administrators necessary, then ordinarily all the administrators should be required to certify the balance. It is clear, however, that in the circumstances described by the Government of the United Provinces a certain amount of inconvenience must frequently result in practice. He would, therefore, recommend that rule 14 of the rules should be so amended as to empower the administrators by formal resolution to select certain of their number to certify the balance. It is probable that the examination which should accompany such a certificate will in practice be more carefully and efficiently made if one or two persons are specially told off for this duty, than if such examination is held to be the joint responsibility of a large number of persons.