

No. 5.

MR. JUSTICE GRESSON TO THE ATTORNEY GENERAL.

Judge's Chambers,
Christchurch, 23rd March, 1865.

SIR,—

Referring to your letter of the 8th instant upon the subject of the investment and security of

First.—Funds belonging to Intestate Estates ; or received under “ The Real Estate Administration Act.”

Secondly.—Funds belonging to suitors.

Thirdly.—Funds belonging to Insolvent Estates, under “ The Debtors and Creditors Act.”

I have been so fully occupied with the business of the Circuit Court as to be unable sooner to consider the important subjects suggested by your letter for consideration ; and even now, leaving home as I am for the vacation, I feel unable to give the various subjects all the consideration they deserve.

First.—With regard to the personal estates of persons deceased, administered by the Registrar of the Supreme Court acting as Official Administrator, it appears to me that although the Rules of 1844 and 1845, may have been applicable to the then state of the Colony, it has now advanced to such a stage as renders it impossible for the Registrar, compatibly with his other duties, to act as Official Administrator strictly according to those Rules. For example, Rule 1 of 1845 contemplates the auditing by the Judge, once a month, of the account in every estate under administration, and that in the absence of the parties interested, who alone could call his attention to any incorrectness, and therefore without any practical result. This Rule has never been acted on in this District (as I am informed) and could not be at present compatibly with the other duties of the Judge and Registrar. In the present state of this District it appears to me that the duties of the Registrar independently of administrations are such as fully to occupy his time ; and that by adding other onerous duties would of necessity impair his efficiency.

Under these circumstances I think it is worth the consideration of the Legislature whether the time has not arrived for the appointment of a District Officer of the Court as Administrator, or Curator, which person might also act as Receiver of the Court, and might, on occasion, be appointed by the Court a Trustee when such was required. One great advantage of the appointment of such an officer would be that it would leave to the Registrar what appears to me his legitimate and useful duty, the assistance of the Court in matters of enquiry, taxation of costs, and taking accounts when so directed.

It is probable that the ordinary commission would not afford an adequate income for such an officer, who, if appointed Receiver, would be called upon to give security, and ought to be liberally paid. It seems to me that the advantages to be gained by the appointment of such an officer would much more than compensate for the expense ; and Section IX, of “ The Supreme Court Act, 1860 ” would seem to authorise the appointment of such an officer of the Court.

As to monies received under “ The Real Estate Administration Act, 1860.” The seventh Section of the Act provides that monies received by the Registrar shall by him be paid quarterly into the Colonial Treasury, by order of the Judge, and provides similarly for payments out of necessary disbursements ; thereby involving, in each case, the necessity of considerable costs. The advantage of this quarterly payment is not apparent, as Section IX, of Act (Like the Court Rule 552) contemplates an annual audit. The Officers whose appointment is suggested above might with advantage discharge the duties now devolved upon the Registrar under the last-mentioned Act.

With regard to your suggestion for auditing all outstanding accounts through an Inspector or Auditor appointed by the Governor, it appears to me that there are serious objections to such a course. In the first place the Official Administrator is accountable to the Court and to it only ; and it may be necessary for him to retain balances in his hands for the purpose of duly administering the Estate. And the effect of paying such balances into the Colonial Treasury at once previously to passing his accounts, would be to cause further costs and complication of the accounts. Your next suggestion of weekly applications to the Judge seems to me to illustrate strongly the impracticability of such a proceeding.

Possibly the object you have in view of preventing, so far as possible, the retention of large balances by administrators for want of enquiry, might be attained sufficiently for all practical purposes by a return, yearly or half-yearly, of all balances in hand exceeding say £100 in any one estate.

With regard to funds belonging to suitors, by which I understand you to mean money paid into Court to abide the event of an action, the practice here is that of the Common Law Courts at Westminster. It is true that it is in the power of the Registrar alone, but the sums so paid in are, generally speaking, small, and the time they remain in is short and uncertain.

To make a Judge's order necessary for payment in and out would be to reduce the fund greatly by the costs, which would be considerable. To invest sums so small in amount, and for such short periods would be impossible.

There are cases, which I need not specify, of sums paid into Court, as into the Court of