

KENYA

X. 2473

11 MAR 1926

S. DEPT. OF  
TREASURY

176

THE FEDERAL GOVERNMENT

REGULATION

102

SUITABLE ACCOUNTS IN THE  
SUPREME COURT.

S. of S.

Asks for ruling as to  
the method of dealing with -----

S. of S.

S. of S.

of State

Previous Paper

MINUTES

Perhaps it can be kindly given  
has been done there

Casey  
1/10/26

At the

The Chief Justice's argument that  
Col. Reg. 367 (1908 Edn.) implies that the  
Court accounts are not under the admini-  
stration of the Treasurer is not well  
founded. Col. Regs. Nos. 367 to 368 com-  
prised a rather detailed enumeration of  
duties which the Auditor was to carry out;  
and there is no more ground for alleging  
that Court accounts should not be under  
the control of the Treasurer because they  
are mentioned in Col. Reg. 367 than there  
would be for contending that the Customs  
and Excise accounts, the Govt. Hospital  
accounts, accounts of Court fees and

Ans'd. 108. 15 July 29  
(See marking of minutes.)

Subsequent Paper

X-10-56

Post Office accounts and Govt. Savings Bank accounts are not under the control of the Treasurer because they were mentioned similarly in Col. Regs. 361-363, 365, 366 and 368.

2. In the 1928 Edition of the Colonial Regulations this detailed enumeration of duties has been omitted as no longer necessary now that pre-audit has been generally abolished in the Colonies and a proper system of audit under central control under the D.C.A. has been established in the large majority of Colonies.

3. The original authorities under which Judicial deposits came into the Colonial Accounts are (1) Resolutions regarding Colonial Accounts which were adopted by the House of Commons in 1845 and (2) arising therefrom, a code of "Instructions to Governors of Colonies" prepared by the Audit Board and issued by the Treasury through the Colonial Office in 1847. The principle of the "Instructions to Governors" was to the effect that all public monies in a Colony were in the charge of a single Colonial Accountant having under him Sub-Accountants responsible for monies held in stations or districts away from the seat of Government. Monies deposited in Court were required to be paid into the common chest in the same way as all other monies received by public officers in their official capacity. The rule which has been followed in the Colonial Audit Department is that no exception to this rule is permissible without the explicit sanction of the Secretary of State in each individual case. In certain Colonies such sanction has been given

in

in connection with certain departments styled "self accounting", but, so far as I am aware, no such sanction has been given in the case of Judicial Deposits.

4. A somewhat similar question arose in 1915 in connection with the administration by the Registrar of the High Court of estates of deceased persons in Nyasaland - see 51161/15 Nyasa. and 23874/16 Nyasa. You will see that in that case it was suggested that "receipts on account of the administration of deceased estates should be lodged to the account of the Treasurer and drawn against through the Treasurer in the same way as suitors' deposits".

5. The Secretary of State's view was that "it is desirable that these operations should be subject to some degree of control by the Treasurer and I consider that all money received by the Registrar in connection with the administration of deceased persons' estates should be paid into the Treasury, and that any payments out of it should be subject to the Treasurer's concurrence, the individual transactions being embodied in the general accounts of the Protectorate."

6. As a result Ordinance 10/1916 was passed which required the Registrar to pay into the Treasury all monies received and subjected him to regulations framed by the Treasurer as regards drawing out monies so deposited.

7. I think that it is clearly desirable that Court deposits should be regarded as "funds in the custody of the Government" (Col. Reg. 325, 1928 Edn.), and that the Treasurer as

Para. 8 of  
51161/15.

23874/16  
Nyasaland.

the chief accounting officer of the Colonial Government, under whose general management and supervision the financial and accounting operations of the Government are placed by the Colonial Regulations, should be put in a position to exercise adequate control over the accounting operations of the Registrar. There is, of course (as pointed out in X.2473/26 Kenya) no question of the Treasurer interfering with the decisions of the Court regarding the persons entitled to receive payment out of them - and there is thus no question of the Executive interfering with the independence of the Courts in judicial matters as the Chief Justice appears to think. If such deposits were embezzled or lost and the sums in question could not be got out of the Registrar, it is not the members of the Court that would be expected to reimburse the owners, but the Executive Government, and it is for the Executive Government, through its chief accounting officer, the Treasurer, to see that the moneys are kept in safe custody and properly accounted for. What the exact degree of control to be exercised by the Treasurer in the case of Court deposits should be is of course a question the decision of which depends a good deal on the circumstances of the Colony; e.g., on the efficiency of the Registrar's Office, the standing of the Registrar and the amount of the business of the Court.

8. I have not been able to discover whether there is any legal provision in Kenya which bears on the point, though I

x in this paper

x in this paper

have made a short search in the C.O. Library and have consulted Sir John Risley.

9. The question raised in the last part of paragraph 7 of X.2473/26 about the method of keeping and accounting for trust moneys deposited with the Registrar General appears to be an entirely separate matter from that dealt with in the rest of the despatch, which relates to Supreme Court suitors deposits held by the Registrar of the Supreme Court and the District Delegates of that Court. I think it would be best to keep the two matters distinct, and would suggest that the Governor should be promised a separate communication about section 1 of Chapter VIII.

Perhaps the papers could return to me for this purpose after action on the main question has been taken

A. J. Harding  
13/12/28

Sir John Risley  
Should you wish to make any

obtain in this  
A. J. Allen  
28/11/28

x Delors J  
Collection B  
H. A. Allen  
of the  
Intelligence  
AF

I agree generally with Mr Harding - I may add that the recent Judicature Act of 1925 which consolidated the Statutes provisions as to Funds in Court here and substitutes the office of the Supreme Court and the office of Accountant-General (who

the chief accounting officer of the Colonial Government, under whose general management and supervision the financial and accounting operations of the Government are placed by the Colonial Regulations, should be put in a position to exercise adequate control over the accounting operations of the Registrar. There is of course (as pointed out in X.2473/26) the Registrar's question of the Treasurer interfering with the decisions of the Court regarding the persons entitled to receive payment out of them - and there is thus no question of the Executive interfering with the independence of the Courts in judicial matters as the Chief Justice appears to think. If such deposits were embezzled or lost and the sums in question could not be got out of the Registrar, it is not the members of the Court that would be expected to reimburse the owners, but the Executive Government, and it is for the Executive Government through its chief accounting officer - the Treasurer - to see that the moneys are kept in safe custody and properly accounted for. What the exact degree of control to be exercised by the Treasurer in the case of Court deposits should be is of course a question the decision of which depends a good deal on the circumstances of the Colony; e.g., on the efficiency of the Registrar's Office, the standing of the Registrar and the amount of the business of the Court.

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C. Hardinge  
13/12/28

Sir Risley  
Shared (as above) to make any

obtain in this  
J. W. Allen

28/12/28

I agree generally with Mr. Hardinge, - I may add that the recent Judicature Act of 1925 which consolidates the Statute provisions as to Funds to Court fees and constitutes the Reg. Office of the Supreme Court and the Office of Accountant-General (who

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per

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H. A. Allen  
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intended

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in the Act (the Clerk of the Crown),  
 provides that the Lord Chancellor, with  
 the concurrence of the Treasury, may make  
 rules regulating the deposit for payment transfer  
 and delivery in into and out of Court of  
 money and securities which belong to  
 creditors and also the power and duties  
 of the Accountant-General with reference to  
 such money and securities. [see 146]  
 It also provides that Accounts of funds in  
 Court shall be in such form as the  
 Treasury may direct and shall be examined  
 by the Comptroller and Auditor General - and  
 that the Treasury shall cause copies  
 of the Accounts certified by the C & A G  
 to be sent to the Lord Chancellor, and to be  
 laid before both Houses of Parliament [sic 147]  
 The Comptroller and Auditor General is made liable to  
 make and certify all funds in  
 Court [sic 148].

I am sorry that added K.R.  
 contributed to the delay. 31/12/28

I submit draft conso. but  
 I had not included in Whaley's  
 references to the recent British  
 Act.

W.P. Allen  
 (See also 15507/29) 167/229

Mr Parkinson  
 do the draft which  
 you sent me I suggest an  
 omission in para 7 would

also suggest that it would  
 be useful to incorporate in the  
 draft a reference (on the lines  
 of Sir John Rusley's minute) to  
 the system laid down by the  
 Judicature Act 1925. The power  
 given to the Treasury under that  
 Act may be applied to the C.J.  
 of Kenya

was the intention  
 of any committee  
 S.P.R.  
 7/2/29

A. J. Harding  
 JAN 30 1929

Of course I don't wish to restrict the  
 proposed omission from para 7 -  
 in accordance to Whaley's  
 suggestion I have added a new  
 para 8 to include Sir Whaley's  
 remarks.

W.P. Allen  
 57/275

recd  
 P.L.V.  
 above

To: Jan 108 (15507/29 and) 23 FEB 1929  
 To: [unclear] 21 FEB 1929

Seen & Thanks  
 A. J. H. 7/3/29

Downing Street.

15 February, 1929.

Sir,

I have the honour to refer to Sir Edward Grigg's despatch No.176 of the 9th February 1928, and to your despatch No.687 of the 9th December 1928 regarding the question of accounting, relative to the receipt, investment and repayment of deposits by suitors in the Supreme Court.

2. I am advised that the argument in paragraph 4 of Sir E. Grigg's despatch that Colonial Regulation 367 (1908 edition) implies that the Court accounts are not under the administration of the Treasurer is not well founded. Colonial Regulations Nos.367 to 368 comprised a rather detailed enumeration of duties which the auditor was to carry out and there is no more ground for arguing that Court accounts should not be under the control of the Treasurer because they are mentioned in Colonial Regulation 367 than there would be for contending that the Customs and Excise accounts, the Government Hospital accounts, accounts of Court fines and fees, Post Office accounts, and Government Savings Bank accounts are not under the control

of

OFFICER ADMINISTERING  
THE GOVERNMENT OF  
KENYA.

of the Treasurer because of their being mentioned similarly in Colonial Regulations 261-263, 265, 266 and 268.

3. In the 1928 Edition of the Colonial Regulations this detailed enumeration of duties has been omitted as no longer necessary now that pre-audit has been generally abolished in the Colonies, and a proper system of audit under the central control of the Director of Colonial Audit has been established in the large majority of Colonies.

4. The original authorities under which Judicial deposits came into the Colonial Accounts are (1) Regulations regarding Colonial Accounts which were adopted by the House of Commons in 1845, and (2) arising therefrom, a code of "Instructions to Governors of Colonies" prepared by the Audit Board and issued by the Treasury through the Colonial Office in 1867. The principle of the "Instructions to Governors" was to the effect that all public monies in a Colony were in the charge of a single Colonial Accountant having under him Sub-accountants responsible for monies held in stations or districts away from the seat of Government. Monies deposited in Court were required to be paid into the common chest in the same way as all other monies received by public officers in their official capacity.

The



of the Treasurer because of their being mentioned similarly in Colonial Regulations 261-262, 263, 264 and 265.

3. In the 1923 Edition of the Colonial Regulations this detailed enumeration of duties has been omitted as no longer necessary now that pre-audit has been generally abolished in the Colonies, and a proper system of audit under the central control of the Director of Colonial Audit has been established in the large majority of Colonies.

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The

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The view which has been consistently taken by the Director of Colonial Audit is that no exception to this rule is permissible without the explicit sanction of the Secretary of State in each individual case. In certain Colonies such sanction has been given in connection with certain departments styled "self accounting", but, so far as the Director of Colonial Audit is aware, no such sanction has been given in the case of Judicial Deposits.

5. A somewhat similar question arose in 1918 in connection with the administration by the Registrar of the High Court of estates of deceased persons in Nyasaland. In that case it was suggested that "receipts on account of the administration of deceased estates should be lodged to the account of the Treasurer and drawn against through the Treasurer in the same way as suitors' deposits".

6. The view expressed by the Secretary of State in reply was that "it is desirable that these operations should be subject to some degree of control by the Treasurer and I consider that all money received by the Registrar in connection with the administration of deceased persons' estates should be paid into the Treasury, and that any payments out of it should be subject to the Treasurer's concurrence, the individual transactions being embodied in the general accounts of the Protectorate".

7. As a result, the Nyasaland High Court Practice and Procedure (Amendment) Ordinance (No. 10

of 1916) was passed. Under this Ordinance the Registrar is required to pay into the Treasury all monies received and he is subjected to regulations framed by the Treasurer as regards drawing out monies so deposited. 103

8. I am advised that it is clearly desirable that Court deposits should be regarded as "funds in the custody of the Government" (Colonial Regulations 1928 Edition); and that the Treasurer as the chief accounting officer of the Colonial Government, under whose general management and supervision the financial and accounting operations of the Government are placed by the Colonial Regulations, should be put in a position to exercise adequate control over the accounting operations of the Registrar. There is, of course (as pointed out in paragraph 3 of Sir H. Grigg's despatch) no question of the Treasurer interfering with the decisions of the Court regarding the persons entitled to receive payment out of them - and there is thus no question of the Executive interfering with the independence of the Courts in judicial matters, as the Chief Justice appears to think. What should be the exact degree of control to be exercised by the Treasurer in the case of Court deposits is a question, the decision of which depends largely on the circumstances of the Colony; e.g. on the efficiency of the Registrar's Office, the standing of the Registrar and the amount of the business of the Court.

of 1916) was passed. Under this Ordinance the Registrar is required to pay into the Treasury all monies received and he is subjected to regulations framed by the Treasurer as regards drawing out monies so deposited. (10)

8. I am advised that it is clearly desirable that Court deposits should be regarded as "funds in the custody of the Government" (Colonial Regulation 1923 Edition); and that the Treasurer as the chief accounting officer of the Colonial Government, under whose general management and supervision the financial and accounting operations of the Government are placed by the Colonial Regulations, should be put in a position to exercise adequate control over the accounting operations of the Registrar. There is, of course (as pointed out in paragraph 3 of Sir E. Grigg's despatch) no question of the Treasurer interfering with the decisions of the Court regarding the persons entitled to receive payment out of them - and there is thus no question of the Executive interfering with the independence of the Courts in judicial matters, as the Chief Justice appears to think. What should be the exact degree of control to be exercised by the Treasurer in the case of Court deposits is a question, the decision of which depends largely on the circumstances of the Colony; e.g. on the efficiency of the Registrar's Office, the standing of the Registrar and the amount of the business of the Court.

9. I may point out that in England the Supreme Court of Judicature (Consolidation) Act, 1925 (15 and 16 Geo. 5 Ch. 49) which consolidates the statutory provisions as to funds in Court here, and constitutes the Pay Office of the Supreme Court and the officer of Accountant-General (who is a legal officer - the Clerk of the Crown), provides that the Lord Chancellor, with the concurrence of the Treasury, may make rules regulating the deposit, payment, delivery and transfer in, into and out of Court of money and securities which belong to suitors ..... and also the powers and duties of the Accountant-General with reference to such money and securities (Section 146).

The Act also provides that accounts of funds in court shall be in such form as the Treasury may direct and shall be examined by the Comptroller and Auditor-General, and that the Treasury shall cause copies of the accounts certified by the Comptroller and Auditor-General together with his report thereon to be sent to the Lord Chancellor and to be laid before both Houses of Parliament. (Section 148).

The Consolidated Fund is made liable to make good <sup>to</sup> suitors all funds in Court. (Section 134).

10. I shall address a further despatch to you regarding the question raised in the last part of paragraph 7 of Sir H. Grigg's despatch as to the method of keeping and accounting for trust monies deposited with the Registrar General. This appears to be an entirely separate matter from that dealt with in the rest of the despatch, which relates

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to Supreme Court suitors' deposits held by the Registrar of the Supreme Court and the District Delegates of that Court.

I have the honour to be,

Sir,

Your most obedient,

humble servant,



to Supreme Court suitors' deposits held by the Registrar of the Supreme Court and the District Delegates of that Court.

I have the honour to be,

Sir,

Your most obedient,

humble servant,

H. T. Allen.

X. 2473/26 Kenya.

O. D  
R 9-FEB  
1929

~~A. J. Downing~~  
~~W. J. Downing~~

~~E. Harding~~ Sir J. Hiley 7/2  
~~Sturtevant~~ Mr. J. J. J. 7  
~~Grindle~~ Mr. J. J. J. f.s.

~~Davis~~  
~~Wilson~~  
~~Amby-Gore~~  
~~Loval~~  
~~Marv~~

~~S/S~~

DOWNING STREET,

January, 1929.

15 Feb.

DRAFT.

Conson, v minutes.

Sir,

I have the honour to refer to

A.G.

2273/26

Sir Edward Grigg's despatch No. 176 of  
the 9th February 1926, <sup>to the Law and Order</sup> regarding the  
of the 8 Dec 1928 regarding the  
question of accounting, relative to the  
receipt, investment and repayment of  
deposits by suitors in the Supreme  
Court.

1550/7/25

copy to D-6 921

2. I am advised that the  
argument in paragraph 4 of the despatch  
that Colonial Regulation 367 (1908  
Eda) implies that the Court accounts  
are not under the administration of  
the Treasurer is not well founded.  
Colonial Regulations Nos. 357 to 368  
comprised

~~2273/26~~

~~copy to D-6 921~~

copy to D-6 921  
copy to D-6 921

comprised a rather detailed enumeration  
of duties which the Auditor was to carry  
out and there is no more ground for  
arguing that Court accounts should not  
be under the control of the Treasurer  
because they are mentioned in Colonial  
Regulation No. 7 than there would be for  
excluding from the Customs and Excise  
accounts, the Government Hospital accounts,  
the accounts of Court fines and fees, Post  
Office accounts, and Government Savings  
accounts are not under the control  
of the Treasurer because ~~they were~~  
mentioned in Regulation No. 7. I regula-  
tion No. 7, 1903, and 1904, and 1905.  
In the 1933 edition of the  
Colonial Regulations this detailed  
enumeration of duties has been omitted  
as no longer necessary now that pre-  
audit has been generally abolished in  
the Colonies, and a proper system of audit  
under central control <sup>of the C.A.A.</sup> ~~under the D.C.A.~~ has  
been established in the large majority  
of

comprised a rather detailed enumeration of duties which the Auditor was to carry out and there is no more ground for arguing that Court accounts should not be under the control of the Treasurer because they are mentioned in Colonial Regulation 367 than there would be for contending that the Customs and Excise accounts, the Government Hospital accounts, accounts of Court fines and fees, Post Office accounts, and Government Savings Bank accounts are not under the control of the Treasurer because ~~they were~~ <sup>mentioned</sup> similarly in Colonial Regulations 361-363, 365, 366 and 368.

2. In the 1928 Edition of the Colonial Regulations this detailed enumeration of duties has been omitted as no longer necessary now that pre-audit has been generally abolished in the Colonies, and a proper system of audit under central control <sup>Dir. of Audit</sup> ~~under the D.C.A.~~ has been established in the large majority

of Colonies.

~~Y.~~ The original authorities under which Judicial deposits came into the Colonial Accounts are (1) Resolutions regarding Colonial Accounts which were adopted by the House of Commons in 1845, and (2) arising therefrom, a code of "Instructions to Governors of Colonies" prepared by the Audit Board and issued by the Treasury through the Colonial Office in 1847. The principle of the "Instructions to Governors" was to the effect that all public monies in a Colony were in the charge of a single Colonial Accountant having under him Sub-Accountants responsible for monies held in stations or districts away from the seat of Government. Monies deposited in Court were required to be paid into the common chest in the same way as all other monies

received

received by public officers in their official capacity. The <sup>view</sup> rule which has <sup>consistently</sup> been ~~followed~~ <sup>taken by the Director of</sup> in the Colonial Audit

Department is that no exception to this rule is permissible without the explicit sanction of the Secretary of State in each individual case. In certain Colonies such sanction has been given in connection with certain departments styled "self accounting", but, so far <sup>as I am aware, no</sup> ~~as I am aware, no~~ <sup>such</sup> sanction has been given in the case of Judicial Deposits.

5. A somewhat similar question arose in 1915 in connection with the administration by the Registrar of the High Court of estates of deceased persons in Nyasaland. In that case it was suggested that "receipts on account of the administration of deceased estates should be lodged to the account of the Treasurer and drawn against through the Treasurer in the same way as suitors' deposits".

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5/ The view expressed by the Secretary of State in reply was that "it is desirable that these operations should be subject to some degree of control by the Treasurer and I consider that all money received by the Registrar in connection with the administration of deceased persons' estates should be paid into the Treasury, and that any payments out of it should be subject to the Treasurer's concurrence, the individual transactions being embodied in the general accounts of the Protectorate".

16. <sup>Nyasaland</sup> As a result, the High Court Practice and Procedure (Amendment) Ordinance (No. 10/1916) <sup>was</sup> ~~was~~ <sup>passed</sup> <sup>which</sup> <sup>under</sup> <sup>the Ordinance</sup> <sup>is required</sup> required the Registrar to pay into the Treasury all monies received and he <sup>is</sup> ~~is~~ <sup>subjected</sup> <sup>him</sup> to regulations framed by the Treasurer as regards drawing out monies so deposited.

23874/16  
Nyasaland.

8. I am advised that it is <sup>in my opinion</sup> clearly desirable

desirable that Court deposits should be regarded as "funds in the custody of the Government" (Colonial Regulation 325, 1928 Edition); and that the Treasurer as the chief accounting officer of the Colonial Government, under whose general management and supervision the financial and accounting operations of the Government are placed by the Colonial Regulations, should be put in a position to exercise adequate control over the accounting operations of the Registrar. There is, of course, (as pointed out in paragraph ~~10000~~ *E. Figg's* 3 of Sir Edward Bennam's despatch) no question of the Treasurer interfering with the decisions of the Court regarding the persons entitled to receive payment out of them - and there is thus no question of the Executive interfering with the independence of the Courts in judicial matters, as the Chief Justice appears to think. ~~if~~ such deposits were embezzled or lost -

*omit [ ]*  
*A. J. H.*

lost and the sums in question could not be recovered from the Registrar, it is not the members of the Court that would be expected to reimburse the owners, but the Executive Government, and it is for the Executive Government, through its chief accounting officer, the Treasurer, to see that the moneys are kept in safe custody and ~~properly accounted for~~ *should be* what the exact degree of control to be exercised by the Treasurer in the case of Court deposits ~~should be~~ *is* a question, the decision of which depends largely on the circumstances of the Colony; e.g. on the efficiency of the Registrar's Office, the standing of the Registrar and the amount of the business of the Court.

*9/6.* I may point out that the *in case, kind*  
 Supreme Court of (Australia)  
~~1925~~ British Jurisdiction Act, 1925  
 (15 + 16 Geo 5, Ch 49)  
 which consolidates the statutory provisions

provision as to funds in Court here,  
and constitutes the Pay Office of the  
Supreme Court and the office of the  
Accountant-General (who is a legal  
officer - the Clerk of the Crown),  
provides that the Lord Chancellor,  
with the concurrence of the Treasury,  
may make rules regulating the deposit,  
payment, <sup>delivery</sup> ~~transfer~~ and <sup>transfer</sup> ~~delivery~~ in,  
into and out of Court of money and  
securities which belong to suitors  
.....and also the powers and duties  
of the Accountant-General with reference  
to such money and securities. (Sec.146).

The Act also provides that  
accounts of funds in court shall be  
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~~No. 9.~~ I shall address a further  
despatch to you regarding the question  
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Registrar General. This appears to be  
an entirely separate matter from that  
dealt with in the rest of the despatch,  
which relates to Supreme Court suitors'  
deposits held by the Registrar of  
the Supreme Court and the District  
Delegates of that Court.

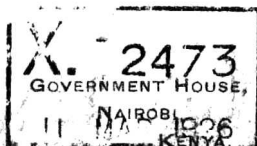
I have, etc.

(Signed) J. S. AMERY



KENYA.

No. 176



117

February, 1926.

Sir,

I have the honour to submit for your consideration the question of accounting, relative to the receipt, investment and repayment of deposits by suitors in the Supreme Court.

2. The present practice is to embody the monthly transactions in the Treasury Accounts from returns submitted by the Registrars and District Delegates of the Supreme Court, but these returns are neither certified correct by the Auditor nor supported by vouchers of any kind so that the Treasury does not in fact exercise any check on the accounts.

3. The Treasurer holds the view that these deposits are "public money" in that they are funds held by a Public Officer in his official capacity and that in respect of these accounts the Registrars and District Delegates are Sub-Accountants of the Treasury and as such are subject to the strict supervision of the Treasurer under Colonial Regulation 218 (v).

Mr. Grannum has no wish to interfere with the directions of the Court in the matter of these deposits, but considers that he is bound under Colonial Regulations to exercise supervision over these as over all other accounts.

RIGHT HONOURABLE  
LIEUTENANT COLONEL L. C. M. S. AMERY, P.C., M.P.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET, LONDON, S.W.

4. The Chief Justice on the other hand is of the opinion that these deposits do not in any way form part of the Government funds and cannot be regarded as public monies which are subject to Treasury control. He argues that these sums of money are credits to various causes and are the property of the parties to such causes or of the individuals on whose behalf the deposits were made; he considers, therefore, that as the sums are paid into Court under the orders of the Court, they are subject to no other control than that of the Court. In support of this contention, Sir Jacob Barth refers to Colonial Regulation 367 which in his view emphasizes the fact that these accounts are under the administration of the Court and not of the Treasurer. He is furthermore of the opinion that the Courts must be independent of the Executive, inter alia, so far as 'Suitors' funds are concerned and that it would be introducing a novel and dangerous practice to claim such funds as public revenue or to include them in the public accounts.

5. On examining the history of these accounts I find that prior to August 1899 the Court deposits formed part of the Treasurer's accounts but that they were then removed from the Treasurer's books. In 1916 the Auditor suggested to the Treasurer that these deposits should be included in his accounts in accordance with Colonial Regulation 344 and the Treasurer took action accordingly but only to the extent stated in paragraph 2 above.

6. The views of the Chief Justice and the Treasurer have been submitted to the Auditor for advice and he holds the same view as his predecessor in 1916, namely that these deposits are "funds in

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6. The views of the Chief Justice and the Treasurer have been submitted to the Auditor for advice and he holds the same view as his predecessor in 1916, namely that these deposits are "funds in

the custody of the Government" and should be incorporated in the Treasurer's Accounts in accordance with the Colonial Regulation 344. He considers therefore that the Treasurer should be responsible for the operations of these accounts and he is furthermore of the opinion that Colonial Regulation 367 refers to an audit comparison of the Court Accounts as kept by the Treasurer with the books and records maintained by the Court. The Chief Justice is of the opinion that the Auditor's view is untenable, holding that the regulation clearly deals with the Auditor's duties in connection with the accounts of all monies under the administration of the Courts in contradistinction to those under the administration of the Treasurer.

7. I shall be glad to receive for my future guidance a ruling in regard to the method of dealing with these deposit accounts and to know whether the procedure set out in Section 1 of Chapter VIII of the draft Financial Orders submitted to you under cover of my despatch No. 876 of 9th July 1925 is approved.

*gmv 35696/25*

I have the honour to be,

Sir,

Your most obedient, humble servant,

*W. S. S. Evans*  
GOVERNOR.