[L./16]
200—25-7-96

E

Legislative (1898) Department.

ORDINARY MS.

G.O., No. 47.
48.

DATED 16.7.98

INDEXED.

9/10

[Despatch Abstract.]

Malabar Wills Act, 1898

Submitting copy of the — as assented to by H.E. the Gov. for the assent of H.E. the Gov.-Genl.

H.C./O

Please have the letter faired.

12/7

BACK PAPERS.

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

FURTHER PAPERS.

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

Submitted for approval as to the marginal abstracts.

approved [illegible]

[illegible]

Note
The Bill was passed into law on the 13th instant.

No 5 of 1896.

A

BILL

TO

Declare the testamentary power of persons governed by the Marumakkatayam or the Aliyasantana law of inheritance, and to provide rules for the execution, attestation, revocation and revival of the wills of such persons.

(As amended by the Select Committee.)

Whereas doubts have arisen regarding the testamentary power of persons governed by the Marumakkatayam or the Aliyasantana law of inheritance; and whereas it is expedient to remove such doubts, and to provide rules for the execution, attestation, revocation and revival of the wills of such persons; It is hereby enacted as follows:—

PART I.

Preliminary.

Madras General Clauses Act 1 of 1891, section 3 (24).

Madras General Clauses Act 1 of 1891, section 5.

1. *(1) This Act may be called "The Malabar Wills Act, 1898."*

(2) It extends to the whole of the Presidency of Madras; and

(3) it shall come into force on such date as the Local Government by notification shall appoint in this behalf.

Provided that nothing in this Act shall be deemed to affect the Hindu Wills Act, 1870.

Indian Succession Act, section 3.
Hindu Wills Act, section 6.

Indian Succession Act, section 3.
Probate and Administration Act, 1881, section 3.
Hindu Wills Act, section 6.

Indian Succession Act, section 3.
Probate and Administration Act, 1881, section 3.
Hindu Wills Act, section 6.

2. *In this Act unless there be something repugnant in the subject or context,*

(1) "Minor" means any person who shall not have completed the age of 18 years.

(2) "Will" means any legal declaration of the intentions of the testator with respect to his property which he desires to be carried into effect after his death.

(3) "Codicil" means an instrument made in relation to a will and explaining, altering or adding to its dispositions. It is considered as forming an additional part of the will.

PART II.

Of Wills.

3. *This part shall apply to persons domiciled in the Presidency of Madras who are governed by the Marumakkatayam or the Aliyasantana law of inheritance.*

4. Every person of sound mind and not a minor *may* by will dispose *of property which he could legally alienate by gift inter vivos and shall be deemed to have been always competent so to dispose of such property.*

1. Madras High Court Reports, page 326.
2. Madras High Court Reports, 162.
I. L. R. 12, Madras, 126.
I. L. R. 4, Madras, 150.

Explanation I.—Persons who are deaf or dumb or blind are not thereby incapacitated for making a will, if they are able to know what they do by it.

Indian Succession Act, section 46 Explanations 2, 3 and 4; Hindu Wills Act, section 2.

Explanation II.—One who is ordinarily insane may make a will during an interval in which he is of sound mind.

Explanation III.—No person can make a will while he is in such a state of mind whether arising from drunkenness or from illness or from any other cause that he does not know what he is doing.

5. *A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.*

Indian Succession Act, section 48.
Hindu Wills Act, section 2.

6. *A will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by will.*

Indian Succession Act, section 49.
Hindu Wills Act, section 2.

7. *Nothing contained in section 4 shall,*

(*a*) *affect any right established before the commencement of this Act by a final decree of a Court of competent jurisdiction.*

Partition Deeds (Madras) Act II of 1884, section 1 (*c*).

(*b*) *authorize a testator to deprive any persons of any right of maintenance of which, but for section 4, he could not deprive them by will.*

Hindu Wills Act, section 3.
Probate and Administration Act, 1881, section 149.
Malabar Marriage Act IV of 1896, section 17 (1).
1. Madras High Court Reports, 326.

(*c*) *affect any law of intestate succession or authorize any testator to create in property any interest which he could not have created prior to this Act.*

Hindu Wills Act, section 3.
Malabar Marriage Act IV of 1896, sections 23 and 24.

PART III.

Of the Execution, Attestation, Revocation, Alteration, and Revival of Wills.

8. *This part shall apply to persons governed by the Marumakkatayam or the Aliyasantana law of inheritance whether they are domiciled in the Presidency of Madras or not.*

9. *All wills and codicils made on, or after the date of the commencement of this Act within the Presidency of Madras and all such wills and codicils made outside*

Hindu Wills Act, section 2.
Madras General Clauses Act I of 1891, section 3 (7).

the said Presidency so far as relate to immovable property situated within the said Presidency must be executed according to the following rules:—

Indian Succession Act, section 50.

First.—The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

Second.—The signature or mark of the testator, or the signature of the person signing for him, shall be so placed, that it shall appear that it was intended thereby to give effect to the writing as a will.

Third.—The will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

Indian Succession Act, section 51.

10. If a testator, in a will or codicil duly attested, refers to any other document then actually written, as expressing any part of his intentions, such document shall be considered as forming a part of the will or codicil in which it is referred to.

Incorporation of papers by reference

Indian Succession Act, section 55.

11. No person, by reason of interest in, or of his being an executor of, a will, is disqualified as a witness to prove the execution of the will or to prove the validity or invalidity thereof.

Indian Succession Act, section 57.

12. No will or codicil, nor any part thereof, shall be revoked otherwise than by another will or codicil, or by some writing declaring an intention to revoke the same and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Revocation of will or codicil

Indian Succession Act, section 58.

13. No obliteration, interlineation or other alteration made in any will after the execution thereof, shall have any effect, except so far as the words or meaning of the will shall have been thereby rendered illegible or undiscernible, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; save that the will, as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

14. No will or codicil, nor any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same; and when any will or codicil, which shall be partly revoked and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown by the will or codicil.

Indian Succession Act, section 60.

15. *No* will *or codicil* made by a soldier employed in an expedition or engaged in actual warfare or by a mariner at sea *and no revocation by such person of his will or codicil shall be deemed invalid by reason only of such will, codicil or revocation not being made in accordance with the provisions of this part.*

Government of Fort St. George.

LEGISLATIVE DEPARTMENT.

A

BILL

TO

Declare the testamentary power of persons governed by the Marumakkatayam or the Aliyasantana law of inheritance, and to provide rules for the execution, attestation, revocation and revival of the wills of such persons.

(As amended by the Select Committee.)

MADRAS ACT No. OF 1898.

An Act to declare the testamentary power of persons governed by the Marumakkatayam or the Aliyasantana law of inheritance, and to provide rules for the execution, attestation, revocation and revival of the wills of such persons.

Preamble.

WHEREAS doubts have arisen regarding the testamentary power of persons governed by the Marumakkatayam or the Aliyasantana law of inheritance; and whereas it is expedient to remove such doubts, and to provide rules for the execution, attestation, revocation and revival of the wills of such persons; It is hereby enacted as follows:—

PART I.

Preliminary.

Short title.

1. (1) This Act may be called "The Malabar Wills Act, 1898."

Madras General Clauses Act I of 1891, section 3 (24).

Local extent.

(2) It extends to the whole of the Presidency of Madras; and

Madras General Clauses Act I of 1891, section 5.

Commencement.

(3) It shall come into force on such date as the Local Government by notification shall appoint in this behalf.

Provided that nothing in this Act shall be deemed to affect the Hindu Wills Act, 1870.

Indian Succession Act, section 3 ndu Wills Act, section 6.

Interpretation clause. "Minor."

2. In this Act unless there be something repugnant in the subject or context,

(1) "Minor" means any person who shall not have completed the age of 18 years.

Indian Succession Act, section 3. robate and dministra- on Act, 81, section

ndu Wills ct, section

"Will."

(2) "Will" means any legal declaration of the intentions of the testator with respect to his property which he desires to be carried into effect after his death.

dian Succession Act, tion 3 obate and inistra- on Act, 81, section

ndu Wills t, section

"Codicil."

(3) "Codicil" means an instrument made in relation to a will and explaining, altering or adding to its dispositions. It is considered as forming an additional part of the will.

PART II.

Of Wills.

Persons to whom this part shall apply.

3. This part shall apply to persons domiciled in the Presidency of Madras who are governed by the Marumakkatayam or the Aliyasantana law of inheritance.

dras Court ts, page

dras Court 182. 126 150

Persons capable of making wills.

4. Every person of sound mind and not a minor may by will dispose of property which he could legally alienate by gift *inter vivos* and shall be deemed to have been always competent so to dispose of such property.

Indian Succession Act, section 46. Explanations 2, 3 and 4. Hindu Wills Act, section 2.

Explanation I.—Persons who are deaf or dumb or blind are not thereby incapacitated for making a will, if they are able to know what they do by it.

Explanation II.—One who is ordinarily insane may make a will during an interval in which he is of sound mind.

Explanation III.—No person can make a will while he is in such a state of mind whether arising from drunkenness or from illness or from any other cause that he does not know what he is doing.

Indian Succession Act, section 48. Hindu Wills Act, section 2.

Will obtained by fraud, coercion or importunity.

5. A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.

Indian Succession Act, section 49. Hindu Wills Act, section 2.

Will may be revoked or altered.

6. A will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by will.

Partition Deeds (Madras) Act II of 1884, section 1 (*c*). Hindu Wills Act, section 3. Probate and Administration Act, 1881, section 149. Malabar Marriage Act IV of 1896, section 17 (1). 1. Madras High Court Reports, 326. Hindu Wills Act, section 3. Malabar Marriage Act IV of 1896, sections 23 and 24.

Saving clause.

7. Nothing contained in section 4 shall,

(*a*) affect any right established before the commencement of this Act by a final decree of a Court of competent jurisdiction.

(*b*) authorize a testator to deprive any persons of any right of maintenance of which, but for section 4, he could not deprive them by will.

(*c*) affect any law of intestate succession or authorize any testator to create in property any interest which he could not have created prior to this Act.

PART III.

Of the Execution, Attestation, Revocation, Alteration, and Revival of Wills.

Persons to whom this part shall apply.

8. This part shall apply to persons governed by the Marumakkatayam or the Aliyasantana law of inheritance whether they are domiciled in the Presidency of Madras or not.

Hindu Wills Act, section 2. Madras General Clauses Act I of 1891, section 3 (7). Indian Succession Act, section 50.

Execution o wills and codicils.

9. All wills and codicils made on, or after the date of the commencement of this Act within the Presidency of Madras and all such wills and codicils made outside the said Presidency so far as relate to immovable property situated within the said Presidency must be executed according to the following rules:—

1st.—The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

2nd.—The signature or mark of the testator, or the signature of the person signing for him, shall be so placed, that it shall appear that it was intended thereby to give effect to the writing as a will.

3rd.—The will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

Indian Succession Act, section 51.

Incor of pa refer

10. If a testator, in a will or codicil duly attested, refers to any other document then actually written, as expressing any part of his intentions, such document shall be considered as forming a part of the will or codicil in which it is referred to.

Indian Succession Act, section 55.

Witness not disqualified by interest or by being executor.

11. No person, by reason of interest in, or of his being an executor of, a will, is disqualified as a witness to prove the execution of the will or to prove the validity or invalidity thereof.

Indian Succession Act, section 57.

Revocation of will or codicil.

12. No will or codicil, nor any part thereof, shall be revoked otherwise than by another will or codicil, or by some writing declaring an intention to revoke the same and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Indian Succession Act, section 58.

Effect of obliteration, interlineation or alteration in a will.

13. No obliteration, interlineation or other alteration made in any will after the execution thereof, shall have any effect, except so far as the words or meaning of the will shall have been thereby rendered illegible or undiscernible, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; save that the will, as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

Indian Succession Act, section 60.

Revival of a will or codicil.

14. No will or codicil, nor any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same; and when any will or codicil, which shall be partly revoked and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown by the will or codicil.

Indian Succession Act, section 52.

Execution and revocation of will or codicil by soldiers or mariners.

15. No will or codicil made by a soldier employed in an expedition or engaged in actual warfare or by a mariner at sea and no revocation by such person of his will or codicil shall be deemed invalid by reason only of such will, codicil or revocation not being made in accordance with the provisions of this part.

In the name and on behalf of Her Majesty the Queen, Empress of India, I assent to this Act.

A. E. Havelock
Governor of Madras

Ootacamund
9th July 1898

Note for the Secretary

A fair copy of the letter to the Private Secretary is herewith submitted for the Secretary's signature.

A copy of the Act is also attached to it for perusal of the Secretary as per his directions when he passed the proof. — flag A

CRV
8/7

A.S.

Kindly check

HT
8/7/5

Checked
a/c
8/7/58

CRV/9/7 Seen afterwards by the Secy

C. 9.7.98
R-11.7.98

[G. 47-A.]
250—15-11-97.

OOTACAMUND,
~~Fort St. George,~~

4th July 1898.

From

H. Tremenheere Esq., I.C.S.,
Secretary to the Government of Madras,

P C M

To

The Private Secretary to
His Excellency the Governor.

Legislative *Department.*
R *No.* 123.

Sir,

× An Act to declare the testamentary power of persons governed by the Marumakkatayam or the Aliyasantana law of inheritance, and to provide rules for the execution, attestation, revocation and revival of the wills of such persons.

In forwarding a copy of the Act specified in the margin ×, I have the honour to state that the Act was passed by the Madras Council for making Laws and Regulations on the 13th ultimo, and to request that you will be good enough to submit it to His Excellency the Governor for his assent in accordance with Council Rule No. 53.

I have the honour to be,
Sir,
Your Most Obedient Servant,

H. Tremenheere
Secretary to Govt.

T.S.
5.7.98

[G. / 24.]
500—8-12-97.

Legis DEPARTMENT.

Papers to be read in Proceedings :—

Again G.O., dated 189 , No.
Again G.O., dated 189 , No
Current No. of 189 , dated , from
" " " 189 , " , "
" " " 189 , " , "

1817

~~ORDER~~ Letter — No. 47 Legis dated 16.7.98

The Secretary to the Government of India,
Home Department. (Public)

Sir,

I am directed to forward a copy of the ~~marginally~~ on the margin noted Act, which was passed by the Madras Legislative Council on the 13th ultimo and received the assent of His Excellency the Governor on the 9th instant and to request that it may be submitted to His Excellency the Governor-General for his assent.

An Act to declare the testamentary power of rsons governed by the Marumakkatayam the Aliyasantana Law of inheritance, and provide rules for the execution, attestation, revocation and revival of the wills of such erson:

2. Two copies of each of the papers specified in the margin are enclosed for refere

1. Bill as ~~originally~~ first introduced
2. ~~Bill~~ Revised Bill introduced into the Council with statement of Objects & Reasons.
3. Select Committee's report and Bill as amended by the Committee.
4. Papers nos 1 to (5) relating to the Bill
5. ~~Abstract~~ Proceedings of the Legislative Council relating to the Bill dated 8 April & 9 December 1896, 9 February 1897, 1 February, 4 April & 13th June 1898

Endorsement No. 48 Legis dated 16.7.98

Copy with enclosures noted on the × margin forwarded to the Government of India Legislative Department with referen

27 copies of each of the papers marginally noted above.

Lo its letters Nos. 751 and 1020 dated 14 July 1879 and 14 May 1889 respectively

Re/117

No 798 Re No 798

FROM ORDERS.

C. S.

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~~hen copied~~ required do — 14/7
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1898

GAIN G.O., No. DATED
189 ,

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LOSURES TO C. No.

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STATEMENT WITH DITTO.

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

N.B.—
A = Copy in full.
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