

17-9-13

[$\frac{2}{11}$]
10-13-2-28

Legislative (1898) Department.

ORDINARY MS.

G.O., No.

78

DATED

5-12-98

IND. FILED

9/12/98

[Despatch Abstract.]

Recording Proceedings Revenue Dept for
wardens & the fees of State for audit
a revised Bill to amend the Madras
Savings Ward Regulation of 1884
and Comm. & the terms of certain
Officers for their remarks thereon

BACK PAPERS.

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

FURTHER PAPERS.

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

Leg CURRENT No. 282
 Government (1898) of Madras.
 REVENUE.

Received
 25/11/98

It is not necessary to send the Bill to the Revenue Dept. as it has been already with reference to clause (2) of rule 12 of the Revenue Instructions.

Recd.

Enclosures

Regd.

1898.

Spare copies

G.O., No. 707, 23rd November 1898.

NOVEMBER.

Madras Court of Wards

Vol V of 1804.

Revising, in conformity with the suggestions of the Government of India, the Bill to amend the law relating to the Court of Wards in India, and communicating the Bill to the Hon'ble the Judges of the High Court, the Hon'ble the Advocate-General and the Board of Revenue for favour of any remarks they may desire to make thereon.

10787 5-12-98

21/11/98

21/11/98

Handwritten notes and signatures

Handwritten notes

GOVERNMENT OF MADRAS.
REVENUE DEPARTMENT.

READ—letter from the Government of India, Revenue and Agricultural Department, No. 199, dated 5th April 1898.

ABSTRACT—Forwarding to the Government of India, Revenue and Agricultural Department, No. 199, dated 5th April 1898, a draft Bill (with Statement of Objects and Reasons) to amend the Madras Court of Wards Regulation V of 1804.

READ—also letter from the Government of India, Revenue and Agricultural Department, No. 1763-133-2, dated 26th August 1898.

ABSTRACT—Approving, subject to certain modifications, the draft Bill to amend the Madras Court of Wards Regulation V of 1804, and requesting that the draft, as finally settled, be forwarded to the Secretary of State in the ordinary course prior to the introduction in Council of the Bill.

ORDER—No. 707, Revenue, dated 23rd November 1898.

The Bill will be revised generally in conformity with the suggestions of the Government of India contained in their letter of 26th August 1898 read above. As regards the provision in section 10, that the proprietor of an estate, who has been declared by Government, on his own application, to be incapacitated, and whose estate has been taken under management, should upon the estate being restored, be declared to be incapable of creating any charge upon it, valid beyond his lifetime, His Excellency the Governor in Council considers that it should be omitted. The Bill as redrafted, will be submitted to the Right Honble the Secretary of State for India.

2. The draft Bill will also be communicated to the Honourable the Judges of the High Court, the Honourable the Advocate-General, and the Board of Revenue for their favour or any remarks they may desire to make thereon.

(True Extract.)

W. S. S. S. S.
for Secretary to Government.

For the Secretary to Government,
Honble the Chief Justice, through the Judicial Department,
Honble the Advocate-General,
Honble the Secretary to Government.

No. or 1898.

A
BILL
to

Amend Madras Regulation V of 1804.

WHEREAS it is expedient further to amend Madras Regulation V of 1804; It is hereby enacted as follows:—

1. This Act shall be read with and taken as part of the Regulation aforesaid.

2. (1) In section 2 of the said Regulation, after the words "from administering their affairs," the following shall be added, namely, "or belonging to persons as to whom the Governor in Council has declared on their own application that they are incapacitated, and that it is expedient in the public interests that their property should be managed by the Court of Wards."

(2) In the first proviso to section 2 of the said Regulation between the words "shall not" and "proceed" insert the following, namely, "in the case of persons incapacitated by minority, sex or natural infirmity," and in the same proviso, for the words "the persons or the property of incapacitated persons," substitute the words "such persons or their property."

3. After section 5 of the said Regulation, the following section shall be inserted:—

"5-A. No person whose property is under the superintendence of the Court of Wards shall, while such superintendence lasts, be competent, without the sanction in writing of the Court of Wards—

"(a) to enter into any contract involving him in pecuniary liability;

"(b) to mortgage, charge, lease or alienate the property under management, or any part thereof, or enter into any agreement to do so; or

"(c) to grant valid receipts for the rents and profits arising or accruing therefrom."

Section 2, Regulation V of 1804.

Act IV of 1892, section 3.

Section 2, Regulation V of 1804.

Act XVII of 1885, section 23 (1).
Act XX of 1896, section 9 (3).
Act IV of 1892, section 13 (60-A).

4. In section 15 of the said Regulation, the words "incapacitated persons" shall be substituted for the word "minors."

Regulation V of 1804, section 15.

5. For the first clause of section 19 of the said Regulation, substitute the following:—

Regulation V of 1804, section 19.

"First.—In the case of persons incapacitated by minority or natural infirmity the Court of Wards shall proceed to choose and appoint guardians of such persons according to the mode hereinbefore provided for the nomination of managers."

6. For the first clause of section 23 of the said Regulation, substitute the following:—

Regulation V of 1804, section 23.

"First.—In every suit or other civil proceeding by or against an incapacitated person which is pending at the date of the notification published under section 28 in respect of such person, or which may be commenced thereafter, the manager of his property appointed under this Regulation, or the Collector shall, in such suit or proceeding, be joined as next friend or guardian *ad litem* as the case may be."

7. After section 27 of the said Regulation, insert the following sections:—

North-Western Provinces and Oudh Court of Wards Bill, 1898, sections 14 and 15.

"28. Whenever the Court of Wards assumes under this Regulation the superintendence of the property of an incapacitated person, the fact of such assumption shall be notified in the *Port St. George Gazette*, and also in the gazette of the district in which such property or any portion thereof is situate; and the incapacitated person shall be deemed to have become a ward under the Court of Wards, and the whole of the movable and immovable property belonging to such person shall be deemed to have come under the superintendence of the Court of Wards from the date of the order of the Governor in Council under section 2 declaring the incapacity or authorizing the Court of Wards to exercise its powers.

"If the property of an incapacitated person is situate in more districts than one, the notification shall also specify the district the Collector of which shall in respect of such person and property discharge the duties imposed upon a Collector by this Regulation.

"29. On the publication of a notification under section 28, every Civil Court in which any suit against the incapacitated person for the recovery of money

New section.

is pending, shall within one month from the date of such notification, forward a copy of the plaint to the Collector of the district in which the property of the incapacitated person is situate, or to the Collector specified in such notification as the case may be, and shall also within the said period furnish the Collector with a statement showing approximately the amounts, if any, due under decrees, the execution of which against the said person is then pending in such court whether applications for the execution of such decrees had been made or not.

"Provided that any expenditure incurred by the Civil Court in making and transmitting copies shall be reported by such court and charged against the estate.

North-Western Provinces and Oudh Court of Wards Bill, 1898, section 17.

"30. (1) On the publication of a notification under section 28, the Collector of the district in which the property of the incapacitated person is situate, or the Collector of the district specified in such notification as the case may be, or any other Collector whom the Court of Wards may appoint in this behalf shall publish in the gazette of the district or districts in which such property may be situate, a notice in the English and in the vernacular languages calling upon all persons having pecuniary claims against the ward or his property to notify the same in writing to such Collector within six months from the date of such notification.

"(2) The notice shall also be published at such places and in such other manner as the Court of Wards may, by general or special order, direct.

"(3) The Local Government may at any stage of the proceedings under sections 30 to 35 inclusive invest any person with the powers of a Collector for any or all of the purposes of these sections.

"31. (1) Every claimant shall together with his statement of claims, present full particulars thereof.

"(2) Every document (including entries in books of account) on which the claimant founds his claim, or on which he relies in support thereof, shall be produced before the Collector with the statement of claim.

"(3) Every such document shall be accompanied by a true copy of the same. The Collector shall mark the original document for the purpose of identification and, after examining and comparing the copy with it, shall retain

North-Western Provinces and Oudh Court of Wards Bill, 1898, section 18.

the copy and return the original to the claimant.

"32. The Collector shall decide which claims, in whole or in part, are to be admitted and which are to be disallowed, and, on his decision being confirmed by the Court of Wards, shall give written notice of the same to the claimants.

"33. Every debt or liability to which the ward is subject, or with which his immovable property or any part thereof is charged other than debts due, or liabilities incurred, to Government and which is not duly notified to the Collector within the time and in the manner hereinbefore mentioned, shall be extinguished.

"Provided that if the claimant can show that he was unable to comply with the provisions of sections 30 and 31, the Collector may admit his claim within a further period of six months from the date of the expiry of the aforesaid period of six months.

"34. If any document in the possession or under the control of the claimant is not produced by him as required by section 31, such document shall not be admissible in evidence against such ward in any suit brought by the claimant, or any person claiming under him.

"35. Nothing contained in section 32 shall be construed to prevent any claimant from suing in any court in respect of any claim which, within the time and in the manner hereinbefore prescribed, has been duly notified to the Collector.

"36. In the case of any specified incapacitated person who has become a ward under the Court of Wards, the Governor in Council may, with the previous sanction of the Governor-General in Council, declare by notification in the official gazette that execution of decrees ordering the sale of immovable property of such ward, or in execution of which a Civil Court has ordered any such immovable property to be sold, be transferred to the Collector of the district in which such immovable property as aforesaid is situate and rescind any such notification.

The Governor in Council may also from time to time prescribe rules for the transmission of the decree from the Civil Court to the Collector, and for regulating the procedure of the Collector in executing the same, and for retransmitting the decree from the Collector to the Civil Court.

North-Western Provinces and Oudh Court of Wards Bill, 1898, section 19.

North-Western Provinces and Oudh Court of Wards Bill, 1898, section 20.

North-Western Provinces and Oudh Court of Wards Bill, 1898, section 21.

North-Western Provinces and Oudh Court of Wards Bill, 1898, section 22.

Act XIV of 1882 (Civil Procedure Code), section 320.

"In executing a decree transferred to the Collector under this section, the Collector shall be deemed to be acting judicially within the meaning of Act XVIII of 1850.

New section.

"37. When the Collector, to whom the execution of any decree has been transferred under section 36, is also the Collector who has to discharge the functions of a Collector under this Regulation in respect of the ward against whom such decree has to be executed, the Governor in Council shall appoint some other officer to exercise the functions of a Collector in respect of any decree so transferred for execution.

New section.

"38. The provisions of sections 321, 322, 322-A, 322-B, 322-C, 322-D, 323, 324, 324-A, 325, 325-A, 325-C, of the Code of Civil Procedure shall, as far as practicable, be applicable to the execution of decrees transferred to the Collector under section 36.

"39. The Court of Wards may at any time release from its superintendence the property of a person declared on his own application to be incapacitated without liquidating any of the claims duly notified and admitted under sections 30, 32 and 33 and in that event the debts and liabilities extinguished under section 33 shall forthwith be revived and any incumbrancer dispossessed under section 40 shall be replaced in possession as if the Court of Wards had not assumed superintendence.

"In calculating the periods of limitation applicable to suits or applications to recover and enforce such debts and liabilities, the time during which the superintendence of the Court of Wards has continued shall be excluded.

"Provided, first, that without the previous sanction of the Governor in Council the Court of Wards shall not so release any property of a person who on his own application has been declared incapacitated by the Governor in Council.

"Provided, secondly, that without such sanction as aforesaid the Court of Wards shall not so release any property when steps have been taken under sections 30 to 33 inclusive for the liquidation of the debts and liabilities with which the property is charged and the liquidation has not been completed.

"Provided, thirdly, that without such sanction as aforesaid the Court of Wards shall not after the expiration of one year from the date of the notification under section 25, of the assumption of superintendence, release any property from its superintendence on the ground

that the debts and liabilities with which it is charged are such as to render their liquidation within a reasonable time impracticable.

"40. (1) If the property or any part thereof, under the superintendence of the Court of Wards, is in the possession of a mortgagee or conditional vendee, or any person claiming under such mortgagee or conditional vendee, the Collector may, with the previous sanction of the Court of Wards by an order in writing, require such incumbrancer to deliver up possession of the same to the manager at the end of the then current revenue year.

"(2) If such incumbrancer refuses or neglects to obey such order, the manager may, without resorting to a Civil Court, enter upon the property, and summarily evict therefrom the said incumbrancer and any other person obstructing or resisting on his behalf.

"(3) If in the deed under which the incumbrancer is in possession of the property no rate of interest is specified, the Collector may offer to the incumbrancer the rate of interest that appears to him to be reasonable, and pass an order fixing the rate accordingly. If the rate so fixed be not acceptable to the incumbrancer, the incumbrancer may appeal to the Civil Court against the Collector's order within one month from the date of the said order, and on such appeal the Civil Court shall fix a reasonable rate. If no appeal is preferred within the prescribed period the incumbrancer shall be deemed to have agreed to the rate fixed by the Collector.

"(4) Nothing in this section shall be held to affect the liability of the property to sale for the realisation of the amount due to the incumbrancer.

"41. If the property under the superintendence of the Court of Wards or any part thereof is in the possession of any person claiming to hold under a lease granted by the incapacitated proprietor and dated within the three years immediately preceding the commencement of the superintendence, the Collector may, with the previous sanction of the Court of Wards, enquire into the sufficiency of the consideration for which the lease was granted, and if such consideration appears to him insufficient he may by written order either set aside the lease or require the person in possession to pay such consideration for the said lease as the Collector thinks fit and in default of such payment the lease shall be cancelled."

Act XX of 1896, section 21.

Act XX of 1896, section 22.

DRAFT STATEMENT OF OBJECTS AND REASONS.

The absence of a law in this Presidency under which it would be competent to a responsible public authority to assume the management of estates, the proprietors of which are not disqualified under the Court of Wards Regulation, has been felt for some years. Instances are not wanting in which certain ancient and extensive zamindaris have become heavily encumbered, owing either to the improvidence of their present proprietors or to the improvidence of their predecessors. In such cases the proprietors themselves feeling their incompetency to manage their estates with any reasonable prospect of discharging their debts and preserving their ancient patrimony, or a substantial portion thereof, are often anxious to transfer the management of the zamindaris to some public authority under the sanction of Government. In the case of certain ancient families it would under such circumstances be distinctly expedient in the public interests that the estates should be managed by some public authority. It has been deemed inexpedient to attain this object in this Presidency by enacting a law on the drastic lines of the Incumbered Estates Acts which are in force in some other provinces. It is considered that the requirements of the Presidency can be sufficiently met by enlarging the scope of the Court of Wards Regulation and bringing within its purview persons as to whom the Governor in Council has declared, on their own application, that they are incapacitated, and that it is expedient in the public interests that their estates should be managed by the Court of Wards. Such a provision finds a place in the Court of Wards Regulations in force in the Central Provinces and in Bengal, and has been proposed in the North-Western Provinces and Oudh Court of Wards Bill. Following these precedents, it is proposed to amend the Court of Wards Regulation in this Province in so far as it is necessary to carry out the above object. In order, however, to carry out this object effectually, it is found necessary that the provisions of the Bill should proceed beyond the corresponding provisions contained in the North-Western Provinces and Oudh Court of Wards Bill, the Bengal Court of Wards Act (Bengal Act IX of 1879 as amended by India Act IV of 1892) and the Central Provinces Government Wards Act XVII of 1885.

2. The provisions contained in the North-Western Provinces and Oudh Court of Wards Bill compelling creditors to register their claims before the Collector, and to produce before that officer all documents in their possession in support of their claim, are incorporated in the Bill. But a new section, section 29, is also added to enable the Collector to obtain trustworthy information as to the extent of debts due under decrees which are in course of execution, and of debts which are claimed in pending suits.

3. Provisions corresponding to new sections 36, 37 and 38 do not find a place in any of the other Court of Wards Regulations. They are, however, on the lines of sections 320 to 325-C of the Code of Civil Procedure. They provide for the transfer to the Collector of execution of decrees passed by Civil Courts which are sought to be executed against an incapacitated proprietor by sale of his immovable property, or any portion thereof. Unlike Incumbered Estates Acts, the Bill in no way affects the jurisdiction of Civil Courts to adjudicate upon all claims against the incapacitated proprietor or his estate, provided such claims have been registered before the Collector; but following the principle recognised by the Legislature in the Code of Civil Procedure that the Local Government may, with the sanction of the Governor-General in Council, transfer in any local area to the Collector the execution of decrees passed by Civil Courts in cases in which such decrees are sought to be enforced by the sale of any immovable property, it is proposed that the Governor in Council may, with the previous sanction of the Governor-General in Council, transfer to the Collector the execution of decrees which have been or may be passed against a particular incapacitated proprietor. New section 38 extends sections 321, 322, 322-A, 323-B, 322-C, 322-D, 323, 324, 324-A, 325, 325-A and 325-C of the Civil Procedure Code to the execution of the decrees passed against a particular incapacitated proprietor which have been transferred to the Collector.

4. New section 39 empowers the Court of Wards to withdraw from the management of the estate of a proprietor who has been declared incapacitated on his own application. On such withdrawal the debts and liabilities extinguished under section 33 revive and any incumbrancer dispossessed under section 40 shall be replaced in possession, but it is at the same time provided that without the express sanction of the Governor in Council the Court shall not withdraw if the liquidation has commenced and has not been completed, nor shall the Court withdraw, without such sanction, if one year has expired from the commencement of the management, merely on the ground that the liquidation of the debts and liabilities may appear to be impracticable.

5. New section 40, which is intended to enable the Court of Wards to bring under the direct management of its officers, properties which are in the possession of mortgagees, is on the lines of the Incumbered Estates Acts, with this material difference, that under the Incumbered Estates Acts the mortgagee is entitled only to the amount awarded to him under the liquidation scheme, whereas under this section he will be at liberty to enforce the payment of the full amount due to him by sale of the property mortgaged. Provision is also made for the Collector's fixing, subject to appeal to the Civil Court, a reasonable rate of interest where the mortgagee fails to specify any rate.

6. New section 41, which follows section 22 of the Sindh Incumbered Estates Act, empowers the Collector to inquire into the sufficiency of the consideration for leases granted by the incapacitated proprietor within three years preceding the commencement of the superintendence, and, in the event of his being satisfied of the insufficiency of the consideration, either to cancel them or to require the payment of an adequate consideration.

7. The provisions of the Bill relating to registration of claims by creditors, the transfer to the Collector of execution of decrees passed by Civil Courts against an incapacitated proprietor will be applicable not only to persons now proposed to be brought under the purview of the Court of Wards Regulation, but also to the disqualified proprietors already under the jurisdiction of the Court of Wards.

Government of Fort St. George.
LEGISLATIVE DEPARTMENT.

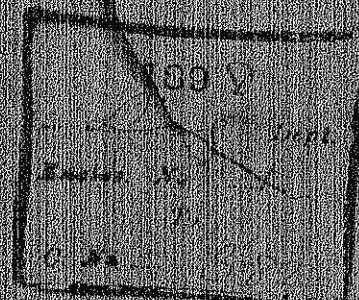
—
A

BILL

to

Amend Madras Regulation V of 1804.

(Introduced)



FORT SAINT GEORGE.

REVENUE (1898) DEPARTMENT.

(Copy.)

LETTER to the Right Honourable the Secretary of State
for India.

No. 12, dated 24 November 1898.

FORWARDING, with remarks, copy of a draft Bill to amend the Madras Court of Wards
Regulation V of 1804.

REVENUE DEPARTMENT.

To

THE RIGHT HONOURABLE THE SECRETARY OF STATE FOR INDIA.

My Lord,

In accordance with the procedure laid down in Lord Salisbury's despatch No. 9, Legislative, dated 31st March 1874, we have the honour to forward a copy of a draft Bill for amending the Madras Court of Wards Regulation V of 1804.

2. The necessity which exists for the legislation contemplated is fully explained in the draft Statement of Objects and Reasons attached to the Bill and in the Proceedings of this Government which accompany this despatch. We intended in the first instance to embody the provisions of the Bill in the larger Bill for amending and consolidating the law on the subject in this Presidency which is now under consideration; but the amending and consolidating Bill contains so many

contentious points besides numerous alterations and amendments that its early passage through the legislature cannot be anticipated. In the meanwhile, the necessity for affording relief to encumbered proprietors in this Presidency is becoming urgent, and we are anxious that the Bill, which in its present form is generally in conformity with the suggestions of the Government of India, should be passed into law with the least practicable delay. We have the honour, therefore, to request that, if such a course be convenient to Your Lordship, Your Lordship's orders upon this despatch may be conveyed by telegram in order that as little delay as possible may occur in proceeding with the Bill in the Legislative Council.

We have the honour to be,

My Lord,

Your Lordship's most obedient, humble servants,

(Signed) A. E. HAVELOCK.
(") A. T. ARUNDEL
(") H. M. WINTERBOTHAM.

Fort St. George,
21st November 1898.

Ed. A. B. Nair.

LIST OF ENCLOSURES.

- G.O., No. 645, Revenue, dated 24th September 1895.
Letter to the Government of India, No. 646, Revenue, dated 24th September 1895.
G.O., No. 479, Revenue, dated 21st September 1896.
Letter to the Government of India, No. 480, Revenue, dated 21st September 1896.
G.O., Mis. No. 4788, Revenue, dated 25th November 1896.
G.O., No. 312, Revenue, dated 11th May 1897.
Letter to the Government of India, No. 313, Revenue, dated 11th May 1897.
G.O., Mis. No. 3065, Revenue, dated 16th June 1897.
Board's Proceedings, No. 249, dated 21st July 1897.
G.O., No. 23, Revenue, dated 11th January 1898.
Letter to the Government of India, No. 199, Revenue, dated 5th April 1898.
Letter from the Government of India, No. 1763-133-2, dated 26th August 1898, with three enclosures—(1) Extract paragraph 3 from letter from the Government of the North-Western Provinces and Oudh, No. 3545, dated 11th December 1897. (2) Draft of a Bill to consolidate and amend the law relating to the Court of Wards in the North-Western Provinces and Oudh. (3) Letter from the Government of India to the Government of the North-Western Provinces and Oudh, dated 19th August 1898.

When given for copying _____
When copied _____
When examined _____ 189
When signed _____

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

CURRENT No.

ENCLOSURES TO G. O. No.

ORDER OF GOVERNMENT A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DUTTO

PAPERS NOT FILED UP, BEING KEPT FOR DEBATCHER
IN ORIGINAL.

N.B.—
1. Copy in full.
2. Not to be copied.
3. Copy abstract only.
4. Copy heading only.