

Legislative (1899) Department.

ORDINARY PRINTED.

Despatch No. 6

DATED 31-7-99

INDEXED.

12/12

[Despatch Abstract.]

Act. to amend Madras Regulation V of 1806,

Transmitting ^{to the Secy of State} Sixty Copies of Madras
Act IV of 1899 (—).

LEGISLATIVE (1899) DEPARTMENT.

Dated 31st July,
No. 6 of 1899.

Transmitting sixty copies of Madras Act IV of 1899.

LEGISLATIVE DEPARTMENT.

LETTER—to

THE RIGHT HONOURABLE THE SECRETARY OF STATE FOR INDIA.

MY LORD,

We have the honour to transmit sixty copies of the Act specified on the margin, which has been passed by the Madras Legislative Council and assented to by His Excellency the Governor and by His Excellency the Governor-General.

2. The papers connected with the Act were forwarded with our letters, No. 12, Revenue, dated 24th November 1898, and No. 4, Legislative, dated 25th May 1899.

We have the honour to be,
My Lord,
Your Lordship's most obedient, humble servants,

OOTACAMUND,
31st July 1899.

Erd. A. F. Eccleston.

MADRAS ACT No. IV of 1899.

PASSED BY THE GOVERNOR OF FORT ST. GEORGE IN COUNCIL.

[Received the assent of His Excellency the Governor on the 22nd
June 1899 and that of His Excellency the Viceroy and
Governor-General on the 3rd July 1899; the Governor-
General's assent was first published in the Fort St. George
Gazette of the 1899.]

14th July

An Act to amend Madras Regulation V of 1804.

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

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

2. (1) In section 2 of the said Regulation, after the words Amendment
“from administering their own affairs,” the following shall of section 2.
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 Regu-
lation 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 Insertion of a
section shall be inserted:— new section
after section 5.

[Price, .]

Disabilities of the person whose property is under the superintendence of the Court of Wards.

"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."

Amendment of section 15.

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

Substitution of a new clause for the first clause of section 19. Appointment of guardians.

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

"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."

Substitution of a new clause for the first clause of section 23.

Manager under the regulation to be joined as next friend or guardian in suits, &c., by or against incapacitated persons.

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

"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 shall, in such suit or proceeding, be joined as next friend or guardian *ad litem* as the case may be."

Insertion of new sections after section 27.

Court of Wards' assumption of superintendence of the property of an incapacitated person to be notified in the Gazette.

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

"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 *Fort 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 or which may be acquired by or devolve on him

during the continuance of the superintendence 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 or from the date of the acquisition or devolution of the property as the case may be.

"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. (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, may at any time with the previous sanction of the Governor in Council, publish in the *gazette* of the district or districts in which such property may be situate, a notice in English and in the vernacular calling upon all persons having pecuniary claims, whether immediately enforceable or not against the ward or his property, to notify the same in writing to the Collector within six months from the date of such notification.

"Explanation.—For the purposes of this sub-section and sections 30 and 33 a pecuniary claim shall be deemed to be a claim notwithstanding a suit for its enforcement or a reference of such claim to arbitration is pending or a decree or award has been passed establishing the same.

"(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 and shall be sent by registered post to every person who is known to the Collector as having a pecuniary claim against the ward or his property, and of whose address he is aware, or is credibly informed.

"(3) The Local Government may at any stage of the proceedings under sections 29, 30 and 32 invest any person either by name or in virtue of his office with the powers of a Collector for any or all of the purposes of these sections."

"30. (1) Every such claimant shall, within the period prescribed by section 29, notify to the Collector in writing his claim with full particulars thereof; provided that any claim presented after the expiration of such period and within a further period of six months may be admitted if the claimant satisfies the Collector that he had sufficient cause for not notifying the claim at an earlier date.

Consequences of such notification.

Procedure when property is situate in more districts than one.

Collector may publish notice calling upon persons having pecuniary claims against the ward, &c., to notify them to him within six months from the date of notification.

What shall be deemed to be a pecuniary claim.

In what other places and manner the notice should be published.

Local Government may invest any person with the powers of a Collector.

Persons to notify their claims within the prescribed period. Exception.

Production by claimants of documents relating to their claims.

"(2) Every document (including entries in books of account) in the possession or under the control of the claimant on which he founds his claim shall be produced before the Collector with the statement of claim or within such time after the preferring of the claim as may be allowed by the Collector in that behalf; provided that if the claim relates to an amount secured by a decree or award, it shall be sufficient for the claimant to produce before the Collector a certified copy of the decree and a certificate from the court which passed or is executing the same declaring the amount recoverable thereunder or a true copy of the award and a statement of the sum recoverable thereunder as the case may be; and if the claim is pending adjudication in any court or has been referred to arbitration, it shall be sufficient for the claimant to produce a certified copy of the plaint or a true copy of the reference to arbitration as the case may be.

Collector may require production of other documents by the claimants.

"(3) It shall be lawful for the Collector to require the production by any claimant of such of the documents in his possession or power relating to his claim other than the documents if any produced under sub-section (2) which the Collector may consider necessary.

Documents produced to be accompanied by true copies.

"(4) Every document produced under this section 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 the copy and return the original to the claimant."

Saving of claims of Government or Local authorities and of claims for maintenance, &c.

"31. Nothing contained in sections 29 and 30 shall apply to any pecuniary claim of Government or any local authority as defined in the General Clauses Act, 1897, or to claims for maintenance, or for wages or salaries due to servants."

Collector to decide which claims are to be allowed and which disallowed.

"32. The Collector shall, after making such enquiry as he may deem fit, decide which of the claims notified or admitted under sub-section (1) of section 30 are to be allowed in whole or in part 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. Provided that nothing herein contained shall be construed as precluding any claimant from continuing or instituting proceedings in any court in respect of any claim whether such claim be allowed or disallowed by the Court of Wards in whole or in part."

Proviso as to claimant's liberty to sue in court.

"33. Every pecuniary claim against the ward or his property which ought to be but is not duly notified to, nor admitted by the Collector under sub-section (1) of section 30 shall notwithstanding any law, contract, decree or award to the contrary cease to carry interest from the expiration of the period prescribed by section 29, and shall not be paid until after the discharge or satisfaction of the claims notified or admitted under sub-section (1) of section 30."

"34. No document in the possession or under the control of the claimant which should have been, but has not been, produced in accordance with the requirements of section 30 shall be admissible in evidence against the ward or his representative in any suit brought by the claimant or any person claiming under him unless good cause be shown to the satisfaction of the court for the non-production thereof before the Collector."

"35. 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 passed by Civil Courts, which are capable of execution by sale of any immovable property of such ward, or which in pursuance of a contract specifically affecting any such immovable property order the sale of the same, whether such decrees be passed prior to such notification or subsequent thereto, be transferred to the Collector of the district in which such property or any portion thereof is situate and rescind such notification:—Provided that when a portion only of a decree passed by a Civil Court is of the description aforesaid such portion alone shall be transmitted to the Collector for execution.

"The Governor in Council may also notwithstanding anything contained in the Code of Civil Procedure 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.

"Rules under this section may confer upon the Collector or any gazetted subordinate of the Collector all or any of the powers which the court might exercise in the execution of the decree if the execution thereof had not been transferred to the Collector, including the powers of the court under sections 294 and 312 of the Code of Civil Procedure and may provide for orders passed by the Collector or any gazetted subordinate of the Collector, or orders passed on appeal with respect to such

Claims not notified nor admitted, to cease to carry interest from the expiration of the prescribed period, and not to be paid before those notified or admitted. Documents not produced before Collector inadmissible in evidence unless good and sufficient cause be shown.

Transmitting to Collectors certain decrees for execution.

Power to prescribe rules as to transmission, execution and retransmission of decrees.

What power the rules may confer and what they may provide for.

subject to appeal orders, being to and revision by superior revenue authorities as nearly as may be as the orders passed by the court, or orders passed on appeal with respect to such orders, would be subject to appeal to and revision by appellate or revisional courts under the Code of Civil Procedure or other law for the time being in force if the decree had not been transferred to the Collector.

"A power conferred by the rules upon the Collector or any gazetted subordinate of the Collector, or upon any appellate or revisional authority, shall not be exerciseable by the court or by any court in exercise of any appellate or revisional jurisdiction which it has with respect to decrees or orders of the court.

"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."

"36. When the Collector, to whom the execution of any decree has been transferred under section 35, is also the Collector who has to discharge the other 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 person by name or in virtue of his office to exercise the functions of a Collector under this Regulation in respect of such ward other than the execution of the decrees transferred to him."

"37. 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, subject to the provisions of this Act and to such rules as may be prescribed by the Governor in Council under section 35, be applicable as far as may be, to the execution of decrees transferred under section 35."

"38. (1) The Court of Wards may, with the previous sanction of the Governor in Council at any time within two years from the date of the notification published under section 28, release from its superintendence, on a day to be notified, the property of a person declared on his own application to be incapacitated, without liquidating any of his debts and liabilities or after liquidating some of the debts and liabilities, when the Court of Wards is satisfied that it is impracticable to liquidate within a reasonable time all the debts and liabilities or such of them as have not been liquidated and in either case the legal incapacity of such ward shall cease, on the date so notified.

"(2) When any incumbrancer is dispossessed under section 39, and his debt remains unliquidated at the time the Court of Wards releases from its superintendence the property of such incapacitated person under sub-section (1) the Collector shall replace the incumbrancer in possession.

"(3) Whenever the property of a person is released under sub-section (1) from the superintendence of the Court of Wards, the provisions of sections 33 and 34 shall not apply to any of the debts and liabilities of the ward remaining unliquidated at the time when his property is so released.

"(4) In computing the period of limitation applicable to a suit or application which may be brought or made against such person or his legal representative after the release by the Court of Wards from its superintendence of his property, the time during which the superintendence of the Court of Wards continued shall be excluded."

"39. (1) If, in the case of an incapacitated person in respect of whom a notice has, with the previous sanction of the Governor in Council, been published under section 29, the property or any part thereof, under the superintendence of the Court of Wards, is in the possession of a mortgagee or any person claiming under such mortgagee, 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 Collector 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 instrument of mortgage under which the incumbrancer is in possession of the property no rate of interest is specified, the Collector shall in cases where the mortgage debt has been notified to or admitted by him offer to the incumbrancer the rate of interest which appears to him to be reasonable; and pass an order fixing the rate accordingly. Copy of the order shall be served upon the incumbrancer in the manner prescribed by the Code of Civil Procedure for service of summons upon a defendant. If the incumbrancer be dissatisfied with the rate of interest so fixed, he may within three months from the date of service upon him of such order institute a suit against the ward in a District Court within whose

Collector to replace dispossessed incumbrancers in possession when debts remain unliquidated at the time of release.

Provisions of sections 33 and 34 not applicable to debts, &c., remaining unliquidated at the time of release.

Period of limitation how to be computed in suits against wards whose property has been released.

Power to remove mortgagee in possession.

Procedure when incumbrancer refuses to deliver up possession.

Collector to fix rate of interest when instrument of mortgage specifies no rate.

Power conferred by the rules not to be exerciseable by the court.

If the Collector who is to execute the decree transferred be also the Collector under the Regulation, Governor in Council to appoint some other person for the latter office.

Applicability of certain sections of the Code of Civil Procedure to the execution of decrees transferred.

When Court of Wards may release from superintendence the property of incapacitated persons.

Legal incapacity of the ward to cease on the date of release.

jurisdiction the property mortgaged or any portion thereof is situate, and the Court shall, if the mortgage debt has been notified or admitted as aforesaid, pass a declaratory decree fixing such rate of interest as to it may seem reasonable. If no such suit be instituted within the said period, the incumbrancer shall be deemed to have agreed to the rate fixed by the Collector.

Rights of
dispossessed
incumbrancer

"(4) If an incumbrancer is dispossessed under this section, the money due to him under the instrument of mortgage at the date of such dispossession together with subsequent interest on the unliquidated principal of the mortgage debt at the rate stipulated in the said instrument, and in the absence of such stipulation at the rate determined as hereinbefore provided, shall, subject to the provisions of section 33, be recoverable, together with any money which he may be legally entitled to add to the principal money, on the security of the property mortgaged and of the rents and profits arising or accruing therefrom subsequent to the date of such dispossession, in the same manner as if he were a simple mortgagee under the said instrument of such property and of such rents and profits.

"The Collector shall, as soon as conveniently may be, after the expiration of the revenue year commencing with the date of such dispossession and of every successive revenue year declare, subject to the approval of the Court of Wards, the net annual rents and profits realized from such property and such declaration shall be conclusive evidence of the amount of rents and profits arising or accruing from such property."

Power to
inquire into
the sufficiency
of consider-
ation given
for leases.

"40. If, in the case of an incapacitated person in respect of whom a notice has, with the previous sanction of the Governor in Council, been published under section 29, 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, or of any person claiming under such lessee, the Collector may inquire into the sufficiency of the consideration for which the lease was granted; and if such consideration appears to him inadequate, he may, with the previous sanction of the Court of Wards, and after the lapse of two years from the date of the notification published under section 28 give notice in writing that the lease shall determine at the end of the then current revenue year unless the lessee or any one claiming under him pays or agrees to pay such additional consideration as may be mentioned in such notice within a date therein fixed. If within such date such person does not pay or enter into an agreement to pay the additional consideration

demand, or such other consideration as the Collector may be willing to accept, the lease shall determine at the end of the then current revenue year.

"Provided that such person may if dissatisfied with the said notice of the Collector institute a suit against the ward within three months from the date of service of such notice in a District Court within whose jurisdiction the property comprised in the lease or any portion thereof is situate for determining whether the consideration for the lease was adequate and if not whether the additional consideration demanded by the Collector or what other amount is reasonable.

Lessee may
sue to
establish
sufficiency of
consideration.

"If the Court be satisfied that the lease was granted for adequate consideration and it is not shown to be otherwise invalid, the Court shall pass a decree establishing the validity of the lease.

When Court
to pass decree
establishing
validity of
lease.

"If the Court holds the consideration for the lease to be inadequate it shall determine the amount of additional consideration to be paid by the lessee.

When
consideration
is held to be
inadequate,
Court to
determine
amount of
additional
consideration.
Collector to
enter upon
the property
and evict
lessee on his
default to pay
the additional
consideration.

"If no such suit be instituted or if on the institution of such suit, the lessee does not within one month from the date of the decree therein pay or enter into an agreement to pay the additional consideration determined by the Court, the Collector may without resorting to a Civil Court enter upon the property and summarily evict therefrom such person and any other person obstructing or resisting on his behalf."

"41. (1) In the case of a person declared on his own application to be incapacitated such person may after the debts and liabilities affecting him or the estate have been discharged and with the previous sanction of the Governor in Council be replaced in the management of the estate on a day to be notified if the Court of Wards be satisfied that such person will thereafter be competent to take charge of his estate and administer his own affairs and the legal incapacity of such person shall cease on such date.

Restoration
of the
incapacitated
person to the
management
of his estate
after his
debts and
liabilities are
discharged.

"(2) If such debts and liabilities be not liquidated during the lifetime of the incapacitated person, it shall be lawful to the Court of Wards with the sanction of the Governor in Council to continue such superintendence on behalf of the legal representative of such incapacitated person, notwithstanding that such legal representative may not be disqualified by minority, sex or natural infirmity from administering his own affairs. Provided that the superintendence of the Court of Wards shall not extend to other property belonging to the legal representative; and in

Continuance
of the Court
of Wards'
superinten-
dence after
death of
incapacitated
person, if
debts and
liabilities are
not liquidated
during his
life-time.
Proviso.

GOVERNMENT OF FORT ST. GEORGE.

LEGISLATIVE (1899) DEPARTMENT.

(Copy.)

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

Dated 25th May,
No. 4 of 1899.

10 *An Act to amend Mad. Reg. V of 1804.* [MAD. ACT IV of 1899.]

so far as the estate of the deceased incapacitated person is concerned, the legal representative shall be deemed to be a person declared on his own application to be incapacitated. Provided also that when the debts and liabilities are fully discharged, he shall be placed in the management of his estate on a day to be notified and his legal incapacity shall cease on such date."

MADRAS: PRINTED BY THE SUPERINTENDENT, GOVERNMENT PRESS.

Forwarding a copy of the Select Committee's Report on the Bill to amend Madras Regulation V of 1804 together with the Bill as amended by the Committee.

LEGISLATIVE DEPARTMENT.

LETTER—to

THE RIGHT HONOURABLE THE SECRETARY OF STATE FOR INDIA.

MY LORD,

With reference to Your Lordship's telegram, dated 17th January 1899, conveying Your Lordship's assent to the introduction of the Court of Wards Bill forwarded with our despatch, dated 24th November 1898, we have now the honour to forward a copy of the Bill as amended by the Select Committee, together with a copy of their report on the Bill and of the Proceedings of the Legislative Council, dated 4th April 1899, when the Bill was introduced.

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.

OOTACAMUND,
25th May 1899.

Exd. P. Seetharam.

FORT SAINT GEORGE.

REVENUE (1898) DEPARTMENT.

(Copy.)

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

No. 12, dated 24th 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,
24th November 1898.

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.

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,
24th November 1898.

First copy sent to Press.

Returned for signature.

Despatched in print.

READ AGAIN C. O., No.
139

DATED

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

LETTER OF GOVERNMENT

STATEMENT WITH DITTO.

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

N.B. —

- A = Print in full.
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- P = Print abstract only.
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