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Legislative (189 9) Department.

ORDINARY MS.

G.O., No. 83

DATED 18.7.99

IN



[Despatch Abstract.]

Recording with ref to fo. 79 Lg. dt 4-7-99 letter
from the Govt of India returning the authentic
copy of the Act to amend Madras Regulation
V of 1804 assented to by H.E. the Viceroy
& Governor-general.

19-7-99

BACK PAPERS.

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

FURTHER PAPERS.

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

Legislative (1899) Department.

CURRENT No. 192

15/99
Sp 29/89 + paper
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From the Govt of India
Leg. Dept

Order No 838 1879

Recorded with reference to

G.O. no. 79 Legislative D 4 July 1899

No 1384

686/1-99
18

Dated 4-7-99

Received 2

Registered 12-7-99

Enclosures

Spare copies

SUBJECT.

Returning the authentic copy
of the Act to amend Madras
Regulation V of 1804, according
to the H.C. the Secretary &
Governor-General.

15/7/99

17/7/99

15/7/99

Trsf.

12/1

BACK PAPERS.

G.O.	No.	Department.	Date.
228	4-2-89		
25-6-89	28-6-89		

FURTHER PAPERS.

G.O.	No.	Department.	Date.

MADRAS ACT No. OF 1899.

An Act to amend Madras Regulation V of 1804.

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

1. This Act shall be read with and taken as part of the Regulation aforesaid. Construction.
 2. (1) In section 2 of the said Regulation, after the words "from administering their own 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." Amendment of section 2.

(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:— Insertion of a new section after section 5.

"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— Disabilities of the person whose property is under the superintendence 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."

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

5. For the first clause of section 19 of the said Regulation, substitute the following:— Substitution of a new clause for the first clause of 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 herein-before provided for the nomination of managers." Appointment of guardians.

6. For the first clause of section 23 of the said Regulation, substitute the following:— Substitution of a new clause for the first clause of 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 shall, in such suit or proceeding, be joined as next friend or guardian *ad litem* as the case may be." Manager under the regulation to be joined as next friend or guardian in suits, &c., by or against incapacitated persons.

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

"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.

Procedure when property is situate in more districts than one.

"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."

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.

"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.

What shall be deemed to be a pecuniary claim.

"*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.

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

"(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.

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

"(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."

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

"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.

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 recoverable thereunder or a true copy of the award and a statement of the amount 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.

"(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."

Documents produced to be accompanied by true copies.

"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."

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

"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."

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

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.

"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."

Documents not produced before Collector inadmissible in evidence unless good and sufficient cause be shown.

"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.

Transmitting to Collectors certain decrees 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.

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

"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 orders, being subject to appeal 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.

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

Power conferred by the rules not to be exercisable 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.

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.

"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 exercisable 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 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.

"(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."

"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 enquire 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 demanded, 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.

"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.

"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.

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

Rights of dispossessed incumbrancer.

Power to inquire into the sufficiency of consideration given for leases.

Lessee may sue to establish sufficiency of consideration.

When Court to pass decree establishing validity of lease.

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.

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

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

"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.

"(2) If such debts and liabilities be not liquidated during the life-time 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 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."

This Law was made at a meeting of the Council of the Governor of Ant. St. George held for the purpose of making Laws and Regulations on the 6th Day of June 1898.

(Signed) A.E. Havelock
President.

I declare my assent to this Law.

(Signed) A.E. Havelock
The 22nd June 1898. Governor.

An Authentic Copy.

b. J. H. W.

Secretary to Government.

I assent to this Law

Curzon of Kedleston

Viceroy and Governor General

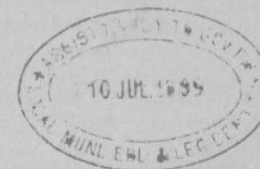
Simla
The 3rd July 1899.

CURRENT No. 192

No. 1304

FROM

J. M. MACPHERSON, ESQ., C. S. I.,
Secretary to the Government of India,
Legislative Department,



TO *The Acting Secretary to the Government of Madras,
Legislative Department*

Dated Simla, the 4th July, 1899.

SIR, *In continuation of my telegram of the 3rd instant,*
I AM directed to return, herewith, with the assent of His Excellency

*To amend Madras
Regulation V of 1804.*

the Viceroy and Governor General signified thereon,
the authentic copy of the Law noted on the margin,
which was received with your letter No. 75, dated
the 23rd June 1899, to the address of the Secretary

~~to the Government of India in the~~

Department.

I have the honour to be,

SIR,

Your obedient Servant,

J. M. Macpherson

Secretary to the Government of India.

When given for copying _____
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When examined _____
When signed _____

Read again G.O., No. _____, DATED
189 ,

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

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IN ORIGINAL.

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