2

Madras Record Office

Government of Madras

Revenue Department.

G. O. No 591 Ex/L.

Dated. 30. 4. 1859

Not to be folded or handled roughly.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from R. D. PARKER, Esq., Member of the Board of Revenue; to the Secretary to Government Revenue Department; dated Madras, 21st April 1859.

1. In continuation of my letter of the 24th ultimo, I have now the honor to submit an Act drafted by Mr. Mayne for the purpose of constituting a Court of Wards.

2. In para. 3 of Extract Minutes Consultation under date the 18th February 1857, the Government directed, that the powers and duties of the Court of Wards should be made the subject of a separate Act, and that the Board of Revenue should, in concert with the Government Pleader, prepare and submit the Draft. In pursuance of these instructions the Board forwarded to the Government Pleader a Sketch enclosed herein which has formed the basis of Mr. Mayne's Draft.

To Govt. Pleader, 10th March 1858.

3. The Preamble, it will be observed, is very much shortened in Mr. Mayne's Draft, but contains, as far as I can see, every thing essential. The Preamble in the Board's Draft is copied from Regulation V. of 1804.

4. By the interpretation clause the Act is made applicable to all landed property which pays Revenue direct to Government. This corresponds with Section III. Regulation V. of 1804 and will include Ryotwar lands—and, in fact, Ryotwar properties in Tanjore, of considerable magnitude, are now taken charge of by the Court of Wards. At the same time, it must be owned, that if the Act were practically put in force as regards Ryotwar estates generally, it would be impossible for the Court of Wards and their Agents to discharge their trusts. I think that the Act may be left as it is, in reliance on the power reserved to the Board of Revenue and the Government to refuse permission for the assumption of an estate under the Court of Wards being sufficient to prevent evil.

5. I beg to draw attention to the fact that Sects. III and IV empower the Court of Wards, without previous reference to Government, to place females of competent intelligence in charge of their property, and to refuse to assume charge of the estate of a disqualified proprietor. It will rarely occur that in such cases the opinion of Government would differ from that of the Court, and I think that, upon the whole, public convenience will be derived from Government being relieved from the necessity of considering them.

6. Sect. IV authorizes a Collector to take such steps as may be necessary to secure the safe custody and proper management of the estate and effects, real and personal, of a disqualified proprietor until the pleasure of the Local Government can be known. This is often done now, but is not authorized by the present Law. At the same time, the power is very essential to preserve an estate, comprizing money and jewels as well as land, from depredation.

7. By Clause 2nd, Sect. VI. Regulation V. of 1804, persons disputing alleged disqualification may lay their cases before the Judge of the Zillah, who is to report to the Sudr Udalut, by which Court the decision is to be passed. The Draft Act empowers the Civil Judge to pass the decision, subject to an appeal within 3 months to the Sudr Udalut, and this, I trust, will be thought an improvement.

8. Sect. VI. following the present law, subjects the Collector to a suit for a wilfully false report of disqualification. Of course where a malicious report is really made no one would wish to screen the delinquent from the annoyance of a suit—but it may be safely said, that the instances in which malice is the motive of an erroneous report will be rare indeed while the imputation only of malice, which too readily occurs to the native mind, is sufficient for the reception of the suit. The section is not required to undo a wrong act; for the previous section provides for that. It can only be used for the purpose of punishment, for which it will be so very seldom justly required, that it is inexpedient, I would submit, to risk for it, the possibility of its being employed from motives of spite.

9. Section XII. is an addition for the purpose of legalizing a course, generally pursued, of securing in the Collector's treasuary, for better custody, the family jewels of minors.

10. I beg to draw attention to Section XIX. which prescribes that the estates of disqualified Proprietors shall not be responsible for debts contracted by Guardian or Managers without

the written sanction of the Collector, unless such debts shall have been incurred for purposes incidental to the proper management of the estate, or for matters of daily or pressing necessity: The expediency of such a provision seems to me to be quite obvious, but it is not contained in the present Law, and the hazard to estates under Wardships from its absence is scarcely suspected.

11. The election of a manager in the case of joint estates whereof a minor is a sharer, provided for by Section XXIII. is included in the Board's sketch and is taken from Bengal Regulation LII. of 1803. Mr. Mayne has added power to the guardian of the disqualified person to demand an account.

12. It will be observed, that Section XXI. provides, that no debt shall bear interest during the management of the Court of Wards *unless written notice thereof* shall have been given to the Collector within 3 months after such disqualification commenced, or after such debt was contracted. In my own experience it has happened, that creditors, satisfied that under the management of the Court of Wards they would eventually receive their debt with 12 per cent. interest, have intentionally avoided making it known to the Collector, whose power in the case of large Estates, of ascertaining the debts outstanding, is very small. Mr. Mayne has, therefore, inserted the clause, noticed above, to deprive of interest debts so kept concealed.

13. The object of prescribing, as in Sect. XXII, that where a debt has been admitted by the Collector during the term of disqualification, the period of limitation shall run from the date of the removal of the disqualification is to render it easier to persuade creditors to forbear to press immediate liquidation of their claims, when it may be inconvenient to discharge them.

14. Sect. XXII. introduces a change into the present Law which I think of great importance. Hitherto charges of fraud against Managers and Guardians have been prosecuted before the Court of Wards, who seated at Madras, have of course been obliged to act on the reports of Collectors. From their decision, again, an appeal lies to the Sudr Udalut; so that the original and appeal decisions are both passed by tribunals at a distance, who are most unfavorably situated for arriving at the truth of the matter. To remedy this apparent defect the proposed Act provides, that if on a preliminary report the Court of Wards see reason to believe an accusation well founded, they shall have power to direct prosecution, criminally or civilly, before the Local tribunals. By the succeeding section (XXXIII) disqualified proprietors, either in person or by their next friend, or duly constituted Agents may prosecute Collectors, Guardians and Managers criminally, but not civilly, without the sanction of the Court of Wards. Such proprietors under the influence of others, might otherwise be led to enter into reckless suits; but it is deemed improper to place any check on resort to the Courts of Justice where Criminal acts are alleged.

15. I am not aware of any other part of the proposed Act which requires comment by me. Nothing is provided in it regarding the marriage of minors, because Act XXI. of 1855, which renders necessary the consent of the Court of Wards, will remain unrepealed.

ORDER THEREON, 30th April 1859, No. 591.

Ordered to be forwarded to the Board of Revenue together with Mr Mayne's Draft, for any remarks that they may wish to offer. An early report is requested.

(True Copy.)

(Signed) J. D. BOURDILLON,
Secretary to Government.

To the Board of Revenue
with Mr. Mayne's Draft.

Exd. H. M. Elliot.

An Act for the purpose of constituting a Court of Wards, and of defining the Powers vested therein, and the Rules under which they are to be exercised.

Preamble. Whereas it is expedient to make provision for the management of estates which pay revenue direct to Government, and whose proprietors are by law incompetent to conduct their own affairs, and also for the due care, maintenance, and education of persons so incapacitated, it is enacted as follows:—

Interpretation Clause. I. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction, (that is to say),

Estate. The word 'estate' shall mean all landed property which pays revenue direct to Government.

Proprietor. The word 'proprietor' shall mean the person for the time being entitled to the possession of such 'estate,' for his own use and benefit.

Disqualified Proprietor. The expression 'disqualified proprietor' shall include all such proprietors, who shall be incompetent to manage their own affairs by reason of being females, minors, or mentally incapable.

Reg. V. of 1804, ss. 2, 4, 5.

Constitution and duties of the Court of Wards. II. The Court of Wards shall consist of the Members of the Board of Revenue for the time being, and it shall be their duty to administer all property which may come into the possession of, or be held by, disqualified proprietors, to provide for the proper care, maintenance, and education of such proprietors, as the circumstances of the case may require, to exercise superintendance and control over all persons to whom they may entrust the discharge of the said duties, and to act as a Court of appeal and review in respect of all decisions or orders passed by any Collector under the provisions hereinafter enacted; provided always that the Court of Wards shall not assume the charge of any estate, until the written sanction of the Local Government shall have been obtained, and that the provisions of this Act shall cease to apply in all cases in which such sanction shall be refused, or subsequently withdrawn.

Reg. V. of 1804, s. 2.

Females and minors. III. It shall be competent to the Court of Wards to place females in the possession and

Ibid, s. 3, *cl.* 2.

Ibid, s. 4.

management of their property, where they may be deemed of sufficient age and ability to conduct their own affairs, and the disqualification arising from minority, shall, in the case of proprietors within the meaning of this Act, terminate at the close of the eighteenth year.

Procedure where a Disqualification arises.

Ibid, s. 3, *cl.* 1.

IV. Where any estate shall come into the possession of a disqualified proprietor, or where the person in possession of such estate shall become disqualified, it shall be the duty of the Collector to take such steps as may be necessary to secure the safe custody, and proper management of the estate and effects, real and personal, of such proprietor, until the pleasure of the Local Government can be known, and to transmit a report of all the facts of the case to the Court of Wards, and it shall thereupon be competent for the Court of Wards, either to refuse to interfere, where no sufficient grounds are shown for their intervention, or to forward the report with their own opinion to the Local Government for its decision and orders; provided always, that it shall be competent for the Court of Wards, with the sanction, or upon the orders of the Local Government, to assume charge of the property of a proprietor at any time during the continuance of a disqualification, notwithstanding they may have originally refrained from interfering.

Reg. X. of 1831, *s.* 2, *cl.* 2.

Appeal in case of supposed Disqualification.

Reg. V. of 1804, *s.* 7.

V. Where any proprietor shall be deprived, or shall be about to be deprived, of the management of his estate on the ground of any supposed disqualification, it shall be lawful for him to apply to the Civil Judge for a Summons, calling upon the Collector to appear within three months and prove the existence of such disqualification, and if the Collector shall fail to appear within such time, or if the Civil Judge shall be satisfied on due enquiry that the supposed disqualification never existed, or has ceased to exist, it shall be lawful for him to place the proprietor in possession, and such decision shall be final as to the facts then in issue, unless an appeal is preferred to the Court of Sudr Udalut within three months, and its decision shall in all cases be final.

False Report by Collector.

Ibid, s. 6.

VI. Where any proprietor shall have been deprived of the possession of his estate in consequence of a false report made by the Collector maliciously and without probable cause, it shall be lawful for him to sue the Collector, and on proof of the above facts, to recover such damages as the Court shall think fit; provided always, that where the decree is against the plaintiff he shall pay double the costs of the suit to the Collector, and that no such action shall survive against a subsequent Collector.

Appointment of Managers.

Ibid, s. 8.

VII. It shall be the duty of the Collector to forward to the Court of Wards the names of the persons whom he shall think most fit to be appointed Managers, together with such applications for the office, and such recommendations from parties interested therein, as may have been laid before him, and it shall be competent for females at their own option to include or exclude their husbands in their recommendation of persons to be appointed Managers of their separate property, and the Court of Wards shall thereupon proceed to nominate a Manager from among the parties so recommended; provided always, that when the said Court shall see due and sufficient reason to reject such recommendations, the cases respectively shall be finally decided by the Governor in Council.

Security bond.

Reg. V of 1804, *s.* 10.

VIII. Persons appointed to manage the property of disqualified proprietors shall give good and sufficient security for their personal appearance during the course of their management, and shall execute the following obligation "I. A. B. having voluntarily taken upon myself the management of the property of C. disqualified proprietor of D. do hereby solemnly promise and engage to manage the said property diligently and faithfully for the said proprietor; and to use all the means in my power to improve the property for the benefit of the owner. I also promise and engage to render a true and just account of my administration, whenever the same may be required, and to be answerable for all embezzlement or misapplication of the property, to the extent of three times the amount which may be proven to be embezzled or misapplied during my management. And I further engage to adhere to such regulations as have been, or may hereafter be, framed for the guidance of Managers by the Court of Wards, and to abstain from all other advantage, directly or indirectly, than the allowance granted to me from the property committed to my charge under the authority of the Court of Wards.

Managers to receive salaries.

Ibid, s. 11, *cl.* 1.

Ibid, cl. 2.

IX. Managers having executed the aforesaid bond, shall be furnished by the Collector with a public commission of management, under the seal and signature of the Collector, and shall receive out of the estate such allowance (to be specified in the commission) as the Court of Wards shall sanction upon the recommendation of the Collector.

Managers to furnish inventories, and accounts.

Ibid, s. 12, *cl.* 2.

Ibid, s. 14, *cl.* 1.

X. On receiving charge of their trust Managers shall furnish an exact inventory, under their seal and signature, to be lodged with the Collector, of the property committed to their custody. They shall also pay monthly to the

Ibid, s. 12. *cl.* 3.

Collector all sums of money received from the property under their charge, and furnish to the Collector true and faithful accounts of their receipts and disbursements, at the expiration of every year.

Power of Managers.

Ibid, s. 12, *cl.* 1.

XI. Managers shall have the entire charge of the property, real and personal of the disqualified proprietors, excepting only, in cases where the Manager may not be the Guardian, the house in which such proprietor may reside, and such articles as are required for his ordinary use and comfort. They shall also have power to nominate the several officers necessary for the administration of the property in trust, and to appoint their salaries, subject however to the revision of the Collector, and to the final confirmation or rejection of the Court of Wards.

Ibid, s. 11, *cl.* 5.

Collectors empowered to take charge of valuables.

XII. It shall be lawful for the Collector to take into his personal custody all jewels or other valuable property, which he may think it desirable to secure, and such property shall be lodged in the District treasury, at the risk of Government, and a receipt for the same, signed by the Collector, shall be given to the Manager.

Managers not to lease or sell land.

Ibid, s. 15.

XIII. It shall not be competent to Managers to grant leases extending beyond the period of one year without the consent of the Collector in writing, nor to mortgage or dispose of any part of the property without the written permission of the Court of Wards.

Charges upon the Estate.

Ibid, s. 14.

XIV It shall be the duty of the Collector, out of the monies which he shall receive in respect of the property under management, to set aside such sums as may from time to time be sanctioned by the Court of Wards, for the expenses of the management, and for the support or otherwise of the disqualified proprietor, and of those whom he is bound to maintain, and such sums shall be a first charge upon the funds in his hands, and shall be paid to the Managers, Guardians, or proprietors as the case may be, as well in years of deficient as of surplus produce.

Government assessment how to be paid.

Ibid, s. 13.

XV. The assessment upon the estates of disqualified proprietors shall be fixed in the same manner as in the case of other lands, and shall be discharged out of the funds remaining in the hands of the Collector, after satisfying the charges mentioned in the previous section; provided always, that such estates shall not be liable to be sold for the payment of the public revenue assessed thereon, and that if the net collection of any year should prove unequal to the discharge of the fixed assessment, the deficiency shall be made good out of such surplus collections as may have

Ibid, s. 14, *cl.* 4.

arisen since the commencement of the management, or as may accrue during its continuance, and that all deficiencies not so liquidated shall cease to be a charge upon the estate, at the termination of its management by the Court of Wards; provided also, that where the Court of Wards may have refused to take charge of the estate of a minor, which has descended to him by regular course of inheritance, such estate shall not during his minority, be sold for arrears of revenue accruing subsequent to his accession to the same.

Reg. X. of 1831, *s.* 2. *cl.* 1.

Disposal of surplus.

Regulation V of 1804, *s.* 16, *cl.* 1.

XVI. Where the estates of disqualified proprietors shall yield a surplus, after discharging the expenses of manangement, the cost of maintenance, and the Government assessment, it shall be lawful for the Collector, with the written sanction of the Court of Wards, to employ such surplus in the improvement of the property, or in the purchase of land, or of the public Government securities, as may seem most fit.

Securities to be lodged with Government.

Ibid, cl. 2, 3.

Ibid, cl. 3.

XVII. All title deeds, bonds, or other securities, received in respect of such purchases, shall be transmitted to the Court of Wards, and forthwith deposited in the public treasury, where they shall remain at the risk of Government, and on deposit receipts in duplicate shall be given by some officer of the treasury authorised for that purpose, and one of the said receipts shall be given by the Collector to the Manager, and the other retained among the Collector's records, and all money due upon such Government securities shall be paid to the Collector, or Secretary of the Court of Wards, whose receipt in writing shall be a sufficient discharge in respect of the same, and who shall be responsible for the due application thereof.

Ibid, cl. 4.

Management of estate held in joint ownership.

Beng. Regulation LII of 1803, *s.* 5.

XVIII. 1st. Where an undivided estate is held by several proprietors, one or more of whom may be disqualified, it shall be competent to the Court of Wards to call on the shareholders to elect a Manager, who shall have the exclusive management of their property, real and personal, during the continuance of his appointment. The determination of the majority of the proprietors, or of the majority of those present in the event of the absence of any, shall be binding on the remainder in the choice of a Manager, and when the votes of the proprietors are equal, the election of the Manager shall be determined by the greater interest of the proprietors in the property. If in any case the interest also be equal, the Manager shall be appointed by the Court of Wards.

2nd. The Guardians of such proprietors as may be disqualified shall vote for them.

3rd. If the joint proprietors of an undivided estate, or their Guardians, shall neglect to elect a Manager on the requisition made by the Court of Wards under Clause 1 of this Section, and communicated to them through the Collector of the District in which the estate is situated, the latter is authorized to nominate a Manager for the approbation of the Court of Wards, which Manager when confirmed by that Court shall have the exclusive management as long as it may be deemed advisable to continue him in that trust. The expense attendant on the appointment of the Manager shall nevertheless be defrayed by the proprietors, who shall also be responsible for the discharge of the public revenue.

4th. The joint proprietors or any of them may obtain, if dissatisfied, a division of their lands, and a proportionate allotment of the revenue assessed thereon, but at their own expense, and the Guardian of the disqualified proprietor shall be entitled to demand an account of the management of the estate, and to sue in the ordinary way for such maintenance or share of the profits thereof as his ward is entitled to by law.

5th. The rules contained in this Act for the management of the estates of disqualified proprietors shall not be held applicable to Managers of the description specified in the foregoing Clauses of this Section.

Power to contract debt.

XIX. No debts contracted by any disqualified proprietor, or by his Guardian or Manager, shall be binding upon the person or estate of such proprietor, without the written sanction of the Collector previously obtained, unless such debts shall have been contracted for purposes incidental to the proper management of the estate, or for matters of daily or pressing necessity; provided always, that nothing in this section shall affect any personal liability which may affect the Guardian or Manager in respect of such contracts.

Payment of Private debts.

Regulation V of 1804, *s.* 17.

XX. It shall be the duty of the Collector, with the written sanction of the Court of Wards, to pay all private debts of which payment shall be demanded, and which may be proved to be due, and binding upon the estate, and such debts shall rank as a charge upon the estate next after the Government assessment, and shall be liquidated in the order of the time at which they were contracted; and all demands for payment of such debts shall be forwarded at once to the Court of Wards for their orders, and the decision of the Court shall be communicated to the claimant, or his authorised agent with all convenient despatch.

When suits may be brought.

XXI. It shall be lawful for every creditor who shall have made a demand in writing upon the Collector, and whose claim shall have been rejected by the Court of Wards, or whose claim shall have been admitted, but not satisfied by the Collector, to sue the disqualified proprietor along with his guardian and manager, in the ordinary civil tribunals, and the Collector may appear, and join in defending such suit, and if the decree shall be for the plaintiff, it may be enforced against the estate according to the ordinary course of law, but no execution shall issue against the proprietor personally till after the removal of all disqualification; provided always, that no creditor shall be entitled to sue during the period of disqualification till after such written demand as is abovementioned, and that no debt shall bear interest during such period, unless written notice thereof shall have been given to the Collector, within three months after such disqualification commenced, or after such debt was contracted, whichever shall have last happened.

Period of limitation.

XXII. All debts due from the estates of disqualified proprietors shall be barred by the ordinary period of limitation, unless they shall have been demanded in writing, and admitted by the Collector before the expiration of such period, and where such claim shall have been allowed, and not liquidated before the removal of the disqualification, then the period of limitation shall run from the date of such removal.

Power to appoint guardian by will.

Reg. V. of 1804, *s.* 19, *cl.* 5.

XXIII. Proprietors of estates whose heirs may be disqualified, shall be free to nominate by will persons to be Guardians of their heirs; and such nomination shall be in writing, signed by the testator in the presence of two witnesses who shall attest the same, and shall be reported by the Collector, and confirmed by the Court of Wards, in all cases in which the parties named are qualified and willing to accept the trust.

Appointment of guardians where no will.

Ibid, s. 18.

Ibid, s. 19, *cl.* 1—3.

XXIV. In all cases where a disqualification may arise, and where no Guardian shall have been nominated as above provided, it shall be the duty of the Collector to forward a report of the case to the Court of Wards, with a description of the condition of the persons concerned, the value of the property, and the names of the persons whom he shall consider most proper to be appointed Guardians, together with such applications for the office, and such recommendations from parties interested therein, as may have been laid before him, and the Court of Wards shall thereupon proceed to nominate a Guardian, and the Manager shall be eligible for such situation; provided always,

that in the case of a female minor, the Guardian shall be a female, and that in no case shall the next legal heir, or any person who may appear to have any interest, direct or indirect, in the death or continued incapacity of the disqualified proprietor, be selected for the office; provided also, that it shall be competent to the Court of Wards to allow a fixed salary to such Guardian, where no fit person can be found to undertake the charge gratuitously.

Ibid, s. 21, *cl.* 2.

Security bond.

Ibid, s. 21, *cl.* 1.

XXV. Persons appointed to be Guardians, and accepting the trust, shall give security for their personal appearance during the continuance of the said trust, and shall execute an obligation according to the following form; that is to say,

"I. A. B., having voluntarily accepted the Office of Guardian of C, being the disqualified proprietor of D, do hereby solemnly promise and engage to execute the duties committed to me zealously and faithfully, to the best of my judgment, and according to law; I will conscientiously appropriate the allowance granted for the maintenance and (if the ward be a minor) for the education of my ward, to the benefit of the said ward; and will abstain from all other advantage than what may be allowed to me by due authority, directly or indirectly arising from my Office of Guardian; I also engage to render true and faithful accounts of all moneys received by me on account of my ward, under the penalty of forfeiting treble the amount of any sums which may be proven to have been embezzled or misapplied, and I do hereby bind myself, my heirs and successors, to make good the said penalty upon due proof of my default.

After executing this obligation, persons appointed to be Guardians shall be invested with their trust by a public commission under the seal and signature of the Collector.

Duties of guardians.

Ibid, s. 21, *cl.* 3.

Ibid, cl. 6.

Ibid, cl. 7, 8.

XXVI. It shall be the duty of Guardians to receive the money allowed for the use of their wards, and to appropriate the same as may seem best for the proper fulfilment of their trust, to choose and recommend proper servants for the use of their wards, whose wages shall be defrayed from the funds set apart for maintenance, to provide for the proper education of minors, and to deliver to the Collector such accounts and vouchers for their receipts and disbursements as he may require, subject however in all respects to the revision, control, and orders of the Collector and the Court of Wards.

Custody and education of male minors.

XXVII. Female relations shall not have the charge of male minors after they have attained

Ibid, cl. 9.

the age of seven years, and the education of such minors shall be superintended and controlled in accordance with the provisions of Act XXI of 1855.

Documents now authenticated.

Ibid, s. 22.

XXVIII. The Guardians and Managers of disqualified proprietors shall authenticate papers by their seals and signatures. The seals of wards, together with those of the previous proprietors, shall be delivered to the Collectors, and lodged in their treasuries so long as the disqualification lasts.

Suits against disqualified Proprietors.

Reg. V. of 1804, *s.* 23.

XXIX. Disqualified proprietors, being in the charge of Guardians, shall not sue or be sued in any civil action except as under the protection, and in the joint names of their Guardians, and wherever such action shall affect their title to their property, or any interest therein, the Manager also shall be joined.

Power of dismissal by Court of Wards.

Ibid, s. cl. 3, 6.

XXX. It shall be competent to the Court of Wards to remove all Managers, Guardians, and Subordinate officers or servants, in all cases where any misconduct, neglect of duties, incompetency, or other unfitness for their position may in the opinion of such Court, be established against them, and such sentence of dismissal shall be final, unless an appeal is preferred to the Local Government within three months from the date of the decision.

Enforcing bond in case of embezzlement.

Ibid, s. 11, *cl.* 5.

XXXI. Where any Guardian or Manager shall be unable to produce, or satisfactorily to account for any monies which came into his hands, in the execution of his trust, it shall be lawful for the Court of Wards to direct the Collector to enforce the bond given by such Manager or Guardian, to such extent as the Court may think fit, and the amount shall be recovered in the same way as arrears of revenue, and all payments so enforced shall be carried to the credit of the estate; provided always, that an appeal shall lie from such decision to the Court of Sudr Udalut within three months from its date, and that it shall be competent for the court in disposing of the appeal to call for and receive, or to direct the Civil Judge of the District in which the estate may lie to take such further evidence, as it may consider the justice of the case demands.

Suits and prosecutions.

Ibid, s. 24.

XXXII. Where any charge of fraud or misconduct shall be brought against any Manager, Guardian, or other person concerned in administering the estate of a disqualified proprietor, it shall be the duty of the Court of Wards to enquire into the justice of the accusation, and if they shall be of opinion that it is well founded, they shall direct the Collector to in-

stitute such proceedings, civil or criminal, in the ordinary tribunal, as they shall think proper, and any suit or prosecution commenced in the name of any Collector, who may be removed from office before final judgment, shall be continued in the name of his successor for the time being.

Actions by disqualified proprietors.

Ibid, s. 23 *cl.* 2, *s.* 26.

XXXIII. It shall be competent for disqualified proprietors, either in person, or by their next friend, or duly constituted agent, to sue any Collector, Manager, or Guardian in respect of any act done by him, which may have injuriously affected their person or property; but no such suit shall be received during the period of disqualification, unless a written permission to commence such action shall have been granted by the Court of Wards, and shall be filed along with the plaint, and unless security for costs shall have been given; provided always, that nothing herein contained shall affect the right of any person to institute criminal proceedings in the ordinary manner.

Limitation of suits.

XXXIV. The period of limitation in respect of all causes of action which may have arisen to the proprietor of an estate during the existence of a disqualification, shall date from its removal, but all suits which may be brought by any proprietor against any Collector, Manager, or Guardian, in respect of any act done or omitted by him while the estate was under management, shall be commenced within one year after such management has ceased.

Suits against Collectors.

Ibid, s. 27.

XXXV. All proceedings which may be instituted against any Collector in respect of any act done, or omitted by him while any estate is under his charge, shall be defended at his own expense, unless the matter complained of was expressly ordered or sanctioned by this Act, or was done under the authority, general or special, of the Court of Wards; provided always, that no action, which may be brought to recover damages from any Collector, on account of any such unauthorized act, shall survive against his successor in office.

Adoption by disqualified proprietor.

Ibid, s. 25.

XXXVI. No adoption made by any disqualified proprietor shall be valid, unless it shall have been sanctioned, or ratified, in writing by the Court of Wards.

Property not subject to the jurisdiction of the Court of Wards.

Reg. X. of 1831, *s,* 3.

XXXVII. The provisions of sections 18, 25, 26, and 28 of this Act shall be extended to property of every description, not subject to the jurisdiction of the Court of Wards, and to the heirs of single as well as joint possessers of property, real and personal.

Draft of Act.

1. Whereas sundry persons being the proprietors of property paying revenue direct to Government have been and may hereafter be incapacitated by minority, sex or natural infirmity from managing in their own behalf, such property by reason whereof the said property has been liable to be transfered to the custody and management of other persons, not being liable to due responsibility or control, and whereas instances have frequently occurred wherein such temporary managers have abused the trust to which they have succeeded, by neglecting the interests or by the fraudulent dilapidation of such property, to the great injury and distress of the persons on behalf of whom the said trusts have been undertaken; and whereas it is expedient & necessary that secure and efficient means should be established,

under

under the sanction of public authority and of legal provisions, for the due preservation of the property of incapacitated persons, the education of minors, and the care of the persons of lunatics and idiots. Whereas the Governor in Council has been pleased to Establish a Court of Wards for these purposes under the following regulations.

II. The Court of Wards shall consist of the Members of the Board of Revenue at the Presidency for the time being and shall possess full powers and authority to take cognizance of all cases of property possessed by or belonging to persons incapacitated by minority sex or natural infirmity from administering their own affairs. The Court of Wards shall also possess power to select and appoint proper persons to the custody and management of property so situated to the education of minors,

and

and to the care of lunatics and idiots (as the case may happen) taking due means to secure and to render the persons so to be selected and appointed responsible for the proper execution of the trust reposed in them; provided, nevertheless, that the said Court of Wards shall not proceed to exercise any powers of superintendance over the persons or property of incapacitated persons until each separate case, together with all the circumstances connected, shall have been submitted to the Governor in Council, and until the authority of the Governor in Council shall have been signified in writing for the exercise of the said powers by the Board of Revenue acting in its capacity of

the

the Court of Wards; and provided further, that the powers of the Court of Wards shall not extend in any case to the property of persons not paying directly rent or revenue to Government.

III. Where property charged with the direct payment of rents or revenues to Government shall be possessed by persons incapacitated by minority, sex or natural infirmity from managing the said property on their own behalf, it shall be the duty of Collectors to transmit, without delay, to the Board of Revenue, in their capacity of Court of Wards, a written report (founded on personal inquiry or on the testimoney of credible persons, according to the nature of the case) describing all the circumstances of each particular

case

case; whereupon the Board of Revenue shall state such cases, together with their opinion and judgment, to the Governor in Council, to the end that the decision and orders of the Governor in Council may be passed thereon.

It shall nevertheless be competent to the Court of Wards, upon due and sufficient proof of the means, ability and discretion of females who may succeed to the possession of property by inheritance, gift or otherwise, to regulate their own affairs, to put the said females respectively in the possession and management of their property.

IV. } Same as Section IV and
V } V Regulation V of 1804

VI. The Proceedings of the Court of Wards shall, in the first instance, be founded on the reports of the Collectors respectively

respectively; to the end that no delay may occur in providing for the due security and manage=ment of the property of persons incapacitated by minority sex or natural infirmity; but Collectors making such reports upon insufficient authority, whereby inheritors of property shall be deprived of the possession and management of the said property on their own behalf, shall be liable to prosecution in the Courts of Udalut at the instance of the Court of Wards; and upon proof that such undue reports have been made through negligence or for malicious purposes, awards of damages, together with costs, shall be granted against Collectors so offending.

VII
VIII
IX
X
} Same as Sections 7-8-9 & 10

XI. Same as Clauses 1 and 2.

3 The Court of Wards shall possess authority, in cases where managers may be proven to have abused their trust, to enforce the penalty of the obligation, and to dismiss such managers from their charge; provided that all such amercement shall be carried to the account of the property in trust. "The Amount of Amercements award=ed against managers by the Court of Wards, may be collected from them or their securities in the same manner as arrears of land revenue."

Same as Clause 4, 5, and 6.

XII
to
XVII
} Same as Sections 12 to 17.

XVIII. Where persons possessing land or other property paying revenue directly to Government may

may happen to be incapacitated by reason of sex minority or natural infirmity for the management of such property on their own behalf Collectors shall respectively accompany their reports of such cases to the Court of Wards with a description of the conditions of the persons concerned, the value of the property possessed by them and the names of persons most proper in the judgment of them (the Collectors) to be appointed guardians of the disqualified heirs; provided that guardians may not have been appointed for such disqualified heirs according to the will of persons authorized by law to make such appointment.

XIX Same as section 19 - except that in clause 4 the words "and not otherwise" are to be omitted

XX 1st Where an undivided Estate is held by several proprietors one or more of whom may be incapacitated by minority sex or natural infirmity, it shall be competent to the Board of Revenue to call on the share holders to elect a manager, who shall have the exclusive management of their lands during the continuance of his appointment. The determination of the majority of the proprietors or of the majority of those present in the event of the absence of any shall be binding on the remainder in the choice of a manager and when the votes of the proprietors are equal, the election of the manager shall be determined by the greater interest of the proprietors in the property. If in any case the interest also be equal the manager shall be

be appointed by the Board of Revenue.

2. The Guardians of such proprietors as may be incapacitated by minority sex or natural infirmity shall vote for them.

3. If the joint proprietors of an undivided Estate, or their guardians, shall neglect to elect a manager on the requisition made by the Board of Revenue under Clause I of this Section and communicated to them through the Collector of the District in which the Estate is situated, the latter is authorized to nominate a manager for the approbation of the Board of Revenue, which manager when confirmed by that Board shall have the exclusive management as long as it may be deemed advisable to continue him in

in that trust. The expense attendant on the appointment of the manager shall nevertheless be defrayed by the proprietors who shall also be responsible for the discharge of the public revenue.

4th But the joint proprietors may obtain, if dissatisfied a division of their lands and a proportionate allotment of the revenue assessed thereon but at their own expense.

5. The rules contained in this Act for the management of the Estates of disqualified landholders shall not be held applicable to managers of the description specified in the foregoing Clauses of this Section.

XXI First. same as the Clause is at present.

Second. Where persons may

may not be found who by reason of Consanguinity friendship or other good cause may be willing to execute the office of Guardian gratuitously a fixed salary shall be allowed at the discretion of the Court of Wards, as a full compensation for the trouble and responsibility of the said Office.

Third. It shall be competent to Guardians regularly appointed to receive the allowance appropriated to the use of their wards, and to appropriate the said allowance at their discretion for the good and benefit of the wards, subject, however, to the inspection &

control

control of the Collectors and ultimately of the Court of Wards

Fourth. Same as Clause fifth.

Fifth. Guardians shall choose and recommend proper servants to be employed in the services of their wards, subject to the approval of Collectors of Zillahs and of the Court of Wards, provided that the expense of the wages of such servants shall be defrayed from the funds appointed for the maintenance of Wards.

Sixth. Same as Clause Seventh.

Seventh. Same as Clause Eighth

Eighth. In cases of Male Minors female relations shall not have charge of such minors after they have attained the age of Seven years. The education of Male Minors is to be superintended and controlled in accordance

with

with the provisions of Act
XXI of 1855.
Ninth - Same as Clause tenth.
XXII - Same as Section XXII.
XXIII. Clause first as at present.
Second. But in cases of fraud
or supposed fraud it shall
be competent for disqualified
persons during the period
of their disqualifications
to employ proper Agents to
prosecute Guardians or Managers
before the Court of Wards -
provided that the permission
of the Court of Wards is first
obtained -
XXIV. 1st Clause. In cases
of frauds imputed to
Guardians or Managers it
shall be competent for the
Court of Wards to order enquiry
to be made in the first
instance by the Collectors
and to pass Judgment on
the result of such enquiries.
2nd Where the Court of Wards,
may

may order the Collector
to enquire into and report
on any such charges against
guardians or Managers,
the Collector is not to pass
judgment which is to be
given by the Court of Wards -
If the Court of Wards or
the Collector shall have
occasion to require the
attendance of any persons
in the course of such
enquiries, they shall make
application to the Judge
of the Zillah to summon
them to attend, and the
Court of Wards and Collectors
are empowered to administer
oaths to such persons, if
necessary, under the rules
and restrictions prescribed
to Zillah Courts for the ad-
ministration of oaths.
The Court of Wards are to
transmit Copies of any
Judgments

Judgments which may be given by them, under this clause, against a Guardian, or Manager, to the Civil Court of the Zillah, and they shall be considered as judgments of the Court and be enforced accordingly. An appeal, however, shall lie from such judgments immediately to the Sudder Adawlut, provided the petition of appeal be preferred to the Zillah Court, or to the Sudder Adawlut, or to the Court of Wards, within 3 Months after the date of the decision and the Sudder Adawlut is empowered to admit an appeal after that period, provided the petition of appeal be presented to that Court, and the appellant shall shew good cause, to its satisfaction for not having preferred the appeal within the prescribed time.

XXV. - First. It shall be competent for the Court of Wards to remove Guardians and Managers for neglect of duty or incompetency as well as for absolute misconduct or breaches of their trust and to appoint others in their stead.

Second - It shall also be competent to the Court of Wards to order the dismissal of any subordinate officers employed by Managers or Guardians in being satisfied of their unfitness to be retained in employ.

XXVI. It shall not be competent for disqualified landholders to adopt children without the consent of the Court of Wards previously had in writing.

XXVII. Collectors, Managers, and Guardians shall be respectively liable to be sued in

in the Courts of Judicature for acts done by them respectively with respect to the abuse of the property of persons of disqualified persons during the period of disqualification. Actions for this purpose are not to be received by the Civil Courts during the period of disqualification without the consent of the Court of Wards produced by the Plaintiffs in writing and in cases where the property of incapacitated persons may have been restored to them or their heirs or successors, any actions against the Collectors, Managers and Guardians for the recovery of damages from those Collectors, Managers and guardians respectively for injuries done to the persons of the Plaintiffs

or

or property during the time of their incapacity must be brought within six months after the cessation of the trust.

XXVIII Such suits as may be instituted against Collectors by virtue of this act shall be defended at the proper costs of the said Collectors provided that the acts and things for which they may be so prosecuted shall not have been authorized or approved by the Court of Wards.

True Copy

A. D. Parker

Mem. Bd of Rev.

R 718/59.

Copy sent as Letter to E
d/ 21st Septr 1859 No 51

D

Ove Bank,

If Ove Bank

Sun on current Bill
on hand let him
present them —

Cert 3d Party

No 102

Revenue 1859 Dept.
Cons. 3d May.

No. 718.

From R. D. Parker Esq.
Member of the Board of
Revenue.

Dated 21st April 1859
Recd. 27th

With 2 Encls.

From Bd. of Revenue 23 June/59
Cr. 12141

Submits an Act
drafted by Mr. Mayne
for the purpose of
constituting a Court
of Wards.

No. 891. 30th April 59.
With an order to

No. 142.

13-613

No. 591.

Ordered to be forwarded
to the Board of Revenue together
with Mr. Mayne's draft, for any
remarks that they may wish
to offer. An early report is
requested.

Fort St. Geo.
30th April 1859

J. Stratton Sec. to Govt.
with Mr. Mayne's draft.

Encl. 2.