# Revenue (1893) Department.

1873

PRESS SERIES.

G.O., No. 1142

DATED 22- 73

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[Despatch Abstract.]

No. 186. Read the following Proceedings of the Board of Revenue, dated 30th September 1873, No. 1,975 :—

Read the following letter from the Hon. D. ARBUTHNOTT, Collector of Tanjore, to H. E. STOKES, Esq., Acting Secretary to the Board of Revenue, dated Combaconum, 9th September 1873, No. 328 :—

FROM the Proceedings of the High Court, appended to the Registrar's letter to the District Judge of South Tanjore, dated 16th ultimo, No. 1,513, and of which a copy has been transmitted to them, the Board will have observed that, in the opinion of the Chief Justice, the duty of the Court of Wards, with respect to taking charge of the estates of disqualified heirs, can only be avoided by an express order of Government in each case.

2. With reference, therefore, to the order of Government, dated 22nd May 1871, which gives Collectors, subject to certain reservations, a general discretional authority to abstain from reporting, I have the honour to request instructions as to whether, in consequence of these Proceedings of the High Court, it becomes necessary that in the case of every ryotwary holding, however small, of which the inheritance devolves on disqualified heirs, a report should be made to the Court of Wards in view to its being laid before Government.

3. The present number of such holdings in seven out of the nine taluqs of the district, from which alone returns have been yet received (estates under the management of the Court of Wards being, of course, excepted) is 510 ; and if it is merely to elicit an order from Government in each case that the Court of Wards need not interfere, the end to be gained is obviously not worth the labour involved in going through the process.

4. On the whole, it appears to me that, if these Proceedings of the High Court are to be regarded as conveying an authoritative enunciation of the existing law on the subject, it is high time to modify the law, and to define in unmistakable terms the relative duties of the ordinary Courts of law and the Court of Wards in this respect.

5. I enclose, for the Board's information, a copy of the letter* which my predecessor addressed to both the District Judges of South and North Tanjore, and which led to the reference made by the Judge of South Tanjore to the High Court.

* Dated 17th March 1873.

ENCLOSURE No. 1.

From W. M. CADELL, Esq., Collector of Tanjore, to the District Judge of South Tanjore, dated 17th March 1873, No. 267.

UNDER Section 20, Regulation V. of 1804, as extended by Section 3, Regulation X. of 1831, I have the honour to forward herewith a list of landed proprietors in the four taluqs of Tanjore Zillah, of which the inheritance has devolved on incapacitated heirs.

2. The total number of such properties, you will observe, is no less than 449, and the circumstances under which it has been found necessary to place this long list before you are these--

In the month of June 1871, the then Acting Head Assistant Collector Mr. Bird brought to my notice the doubtful legality of Revenue Proceedings which recognized private guardians for minor heirs to ryotwary holdings who, under Section 4 of the Regulation above quoted, were not competent to take charge of, or to administer their own affairs during the period of their minority, and pointed out that where the Court of Wards had not chosen to take such properties under their charge, it was necessary that guardians and managers should be appointed by the Civil Court, under Section 20 of the said Regulation, in order that they might be held legally responsible for the administration of the affairs of minor heirs.

3. I at once saw that this view of the state of the law was correct, and that the enactment quoted at the head of this letter rendered it incumbent on the Collector to report to the Civil Court all cases of the above description in which the deceased proprietors had not themselves nominated guardians to their heirs. I accordingly called for complete lists of all cases in which heirs to landed properties were disqualified by minority or other causes, and directed that, in future, each such case as it arose be specially reported.

4. In pursuance of this Circular, lists of unwieldy dimensions in which, upon the erroneous assumption that the being of the female sex necessarily constitutes a disqualification, all cases of female heirs have been included, have, in the course of the last twelve months, been received from the four taluqs comprising the Tanjore Zillah. I have, however, excluded cases of the description last given, and confining myself to those only in which the heirs are disqualified by minority, as also to a few isolated ones of insanity, have had the accompanying list made out. I beg to request that should you agree with me in thinking that the appointment by the District Court of a guardian in each of these cases is a proceeding enjoined by law, and therefore unavoidable, you will take the necessary steps towards that end. It is, of course, out of the question that the Court of Wards would undertake the management of all or any of these numerous small properties.

5. Considering the extent to which, under the Hindu law of partition, sub-division of landed property is carried on in this country, the course of procedure above indicated with regard to every separate holding, however minute, of which the inheritance devolves on a minor heir, must doubtless be attended with much inconvenience; but, so far as I can see, the law as it now stands leaves no alternative. On this point, I would beg also to call your attention to the Proceedings of the late Sadr Court, dated 30th April 1853.

6. It was perhaps not the intention of the legislature in framing Regulation V. of 1804 to impose upon the Courts of law the task of providing for the administration of a mass of petty ryotwary holdings; but the wording of Section 20 and of the subsequent enactment by which its scope has been enlarged, seems to admit of but one construction.

(True Copy.)

(Signed) D. ARBUTHNOTT,
Collector.

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THE letter of the Collector of Tanjore is submitted for the information of Government, with reference to G. O., dated 4th March 1873, No. 254.

*Proceedings of the Madras Government, Revenue Department,*
*22nd October* 1873.

No. 187. ORDER THEREON, 22nd October 1873, No. 1,142.

Miscellaneous.

COMMUNICATED to the Legislative Department, with reference to the Proceedings quoted by the Board of Revenue.

(True Extract.)

J. Thurlow
Ag Under Secretary
for Acting Secretary to Government.

To the Legislative Department.
,, the Board of Revenue.

Exd. F. R. Bantleman.

No. 1513.

FROM

H. WIGRAM ESQUIRE,

*Registrar of the*

*High Court of Judicature at Madras,*

To

F. M. KINDERSLEY ESQUIRE,

*District Judge of South Tanjore.*

SIR,

With reference to your letter dated 30th July 1873, forwarding copies of correspondence between yourself and the Collector and requesting to be informed whether or no you are bound to take action under Section 20 of Regulation V of 1804 as extended by Regulation X of 1831 in all cases brought to your notice, I am directed to forward for your information copy of the Proceedings of the High Court dated 13th November 1871 on a reference from Salem.

I have the honor to be,

Sir,

Your most obedient servant,

HIGH COURT OF JUDICATURE,
MADRAS, 16*th August* 1873.

H. WIGRAM,

*Registrar,*

*Appellate Side.*

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No. 1773.

*Proceedings of the High Court of Judicature at Madras, 13th November* 1871.

Read letter dated 23rd March 1871, No. 8, from the Civil Judge of Salem, submitting four statements shewing the particulars of landed property held by joint and single possessors which has devolved on minor heirs and nominating guardians for the said disqualified heirs.

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The landed property referred to in the above letter as devolving on disqualified heirs appears to consist of a number of ryotwary holdings some of which are in extent very insignificant. Until recently it does not appear to have been the custom to apply to the Zillah Court to nominate guardians except in the case of permanently settled estates; but under instructions from the Board of Revenue and the Government, Collectors have been directed to apply to the Zillah Court in all cases whether the landed property involved is temporarily or permanently settled. In the case of landed property devolving on joint possessors some of whom are minors and disqualified heirs it would seem (though this is not quite clear) that the joint possessors are all members of undivided families and that in the majority of the cases some at least of the co-parceners are of age and qualified to manage.

Legislative Department
Govt. of India 1873 Madras
REVENUE.
To
THE BOARD OF REVENUE,
&c., &c.,
Dated October 22nd.
Recd. 4 5/73
Encl.
G. O., 22nd October 1873, No. 1,142
OCTOBER.
Nos. 186-187.
No 5 9
Rejotwar Estates devolving on intopacit
Proprietors.—Communicating to the Legisla
Department Board's Proceedings giving cov
the letter from the Collector of Tanjore sugge
a modification of the last relating to —
Order thereon 18th November 73, No 75.
Annexed 3 Hs Nos 183 184

2. The High Court have had under consideration the question whether the Regulations V of 1804 and X of 1831 were intended to confer jurisdiction on the Zillah Courts for the appointment of guardians when the Court of Wards might have intervened with the sanction of Government. A majority of the Judges are now of opinion that when the Court of Wards can interfere, the Zillah Courts cannot, and the Chief Justice considers that the duty of the Court of Wards can only be avoided by an express order of Government in each case. The Court are further of opinion that Section 20 of Regulation V of 1804 was not intended to apply to the case of co-parceners.

3. Applying the views stated above to the cases now under reference it appears to the High Court that the Zillah Court has no power to interfere and the lists submitted by the Collector should be returned to him.

(True Extract.)

(Signed) H. WIGRAM,
*Registrar,*
*Appellate Side.*

To

The District Judge of
„ Collector of
„ Judicial Commissioner of
„ Judge of the Court of Small Causes at
„ Subordinate Judge of
„ Secretary to the Board of Revenue.
„ Chief Secretary to Government (with 3 spare copies).
With spare copies for distribution to the District Munsifs within his jurisdiction.

*Proceedings of the Madras Government, Legislative Department, 18th November 1873.*

Read the following papers :—

No. 1. Proceedings of Government in the Revenue Department, dated 4th March 1873, No. 254.

Read the following :—

*Proceedings of the Board of Revenue, dated 23rd February 1872, No. 369.*

Read Proceedings of the Madras Government, dated 1st February 1872, No. 203, Revenue Department.

ABSTRACT.—*Minor Proprietors.*—Proceedings, Board of Revenue, regarding the appointment of guardians for the management of their estates, with orders thereon.

In the concluding paragraph of this Order the Board of Revenue are desired to state the various points in which the Law regarding their functions as the Court of Wards is susceptible of improvement. In the opinion of the Board these points are not numerous, but they avail themselves of the opportunity of offering the following observations on some that appear to them to be important :—

2. FIRST.—*All property* charged with the direct payment of rents or revenues to Government comes within the jurisdiction of the Court of Wards in certain circumstances. When this was enacted the present state of things, when about two millions of tenants contribute directly to the Government Treasury, was certainly not contemplated by the Legislature. The difficulty that would otherwise arise has been got over by an order directing Collectors not to report any but cases of Zemindari property, except where they conceive that the interests of the incapacitated Proprietor would be jeopardized by the omission. The Regulation expressly provides that the sanction of Government is required in each case to enable the Court of Wards to act at all; it is, therefore, perhaps competent to Government to make the order mentioned, but it is a question whether it would not be preferable to exclude all properties under a certain value from the Court's jurisdiction, once for all, by specific legislation. Practically it is only the upper and affluent classes whose heirs require this kind of protection. At all events it appears highly expedient to repeal Clause 1st, Section 2, Regulation X. of 1831, under which the property of minors not taken under the Court of Wards, though subject to their jurisdiction, cannot be sold during their minority for arrears of revenue accruing during such minority. It is optional, as already noted, for the Court to intervene at all, and where they do undertake the management of an estate all arrears of revenue which have accrued during their management are remitted; they are not recoverable from the disqualified Proprietor himself or from his lands after his disqualification has ceased. The propriety of this is evident, but there is nothing to commend the other concession.

Regulation V. of 1804, Section 3, Clause 1st.

Section 2.

Section 15, Clause 4th.

3. SECONDLY.—The property must devolve by inheritance. A wealthy Zemindar dies childless; two or three years afterwards his widow makes a valid adoption to him; the boy selected becomes instantly on completion of the rite the minor Zemindar. It is important to the public interests that he should not be

brought up in ignorance and dissipation, as the chances are that he will be if the Court of Wards do not intervene. Yet can he be said to succeed to the property by inheritance? It may be said perhaps that he does on the ground that, by the theory of the Hindu Law, the son adopted is *quasi*-begotten by the adoptive father. If so, *cadit quæstio;* it is obvious, however, that there are other ways of coming into a property besides inheriting it; and where the party benefited is absolutely incapacitated by minority or, *prima facie*, by sex, power should be given to apply the Regulation, if the Government decide that a proper case has been made out for it. In the case of a *lunatic* the Board observe that the Law now provides for the management by the Court of Wards of the estate if the Court elect to undertake it, and if the estate, *or any part of it*, is subject to their superintendence by the *law in force* in the Presidency. So also as regards the landed property of a lunatic subject to the original jurisdiction of the High Court, where such property is situate beyond the limits of the Presidency Town, except that the words "or any part of it" do not occur.

Act XXXV. of 1858.

Act XXXIV. of 1858.

4. THIRDLY.—Considerable time necessarily elapses before the Court of Wards can move in cases subject to their jurisdiction. The Collector is to submit a report "describing all the circumstances of the case;" this is passed on by the Board with their opinion to Government, whose orders must be awaited before anything is done. In the meantime, it is to be feared, many irregularities take place. The Collector should have full power to take temporary charge of the whole of the property, to make inventories, call for accounts, examine witnesses on oath, &c., &c. On a recent occasion it was found that the heads of the family, after pretending to give the Collector every information, had concealed the existence of a large stock of gold coins. It is not supposed that they intended to "loot" it; but they reserved it as a fund to supply the minor and his brothers with the means for illicit extravagance and debauchery, with the ultimate view of trading upon the gratitude of the boys for the opportunities thus obtained.

Section 3, Clause 1st, Regulation V. of 1804.

5. FOURTHLY.—The provisions which require that the Court of Wards shall submit the question for the decision of Government when they see reason to reject the Collector's recommendation for the appointment of his nominee to be manager or guardian should be rescinded. It is obsolete in practice, and seems incompatible with the relative positions of the differing authorities and with the spirit of the Regulation.

Section 8, Clause 4th.
Section 19, Clause 1st.

6. FIFTHLY.—*Section* 20.—It often happens that the same person is sole proprietor of one estate, and joint proprietor of (not merely a co-parcener with kinsmen in) another estate, whereof the assessment is undivided. When such a person's property comes into the possession of an incapacitated party provision should be made for superintendence by the Court of Wards over the whole property of the incapacitated party; and in any case where they may decline to exercise their jurisdiction it should be lawful for, and incumbent on, the Civil Court in nominating a guardian under Section 20, to extend his powers to the management of the estate, which is *prima facie* subject to the Court of Wards.

*Proceedings of the Madras Government, Legislative Department,*
*18th November* 1873.

7. SIXTHLY.—As portions of the same estate sometimes lie in two or more districts—of which the Calastry and Vizianagram Zemindaries are examples—it should be enacted that the Collector of the district in which the principal portion may be situated is "the Collector" of the Regulations and Acts concerned.

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The Governor in Council approves generally of the suggestions here made for the consolidation and amendment of the Law relating to the functions of the Board of Revenue as Court of Wards; and the Advocate-General, in reply to a demi-official letter from the Secretary, having expressed his willingness to prepare a Bill for the purpose, these papers will now be referred to the Legislative Department in view to the Bill being drafted in communication with the Members of Government.

(True Extract.)
(Signed) D. F. CARMICHAEL,
*Secretary to Government, R.D.*

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No. 2. Proceedings of Government in the Revenue Department, dated 22nd October 1873, No. 1142.

Read the following:—

*Proceedings of the Board of Revenue, dated 30th September* 1873, *No.* 1975.

Read letter from the Hon. D. ARBUTHNOTT, Collector of Tanjore, to H. E. STOKES, Esq., Acting Secretary to the Board of Revenue, dated Combaconum, 9th September 1873, No. 328.

From the Proceedings of the High Court, appended to the Registrar's letter to the District Judge of South Tanjore, dated 16th ultimo, No. 1513, and of which a copy has been transmitted to them, the Board will have observed that, in the opinion of the Chief Justice, the duty of the Court of Wards, with respect to taking charge of the estates of disqualified heirs, can only be avoided by an express Order of Government in each case.

2. With reference, therefore, to the Order of Government, dated 22nd May 1871, No. 900, which gives Collectors, subject to certain reservations, a general discretional authority to abstain from reporting, I have the honour to request instructions as to whether, in consequence of these Proceedings of the High Court, it becomes necessary that in the case of every ryotwary holding, however small, of which the inheritance devolves on disqualified heirs, a report should be made to the Court of Wards in view to its being laid before Government.

3. The present number of such holdings in seven out of the nine taluqs of the district, from which alone returns have been yet received (estates under the management of the Court of Wards being, of course, excepted), is 510; and if it is merely to elicit an Order from Government in each case that the Court of Wards need not interfere, the end to be gained is obviously not worth the labour involved in going through the process.

4. On the whole, it appears to me that, if these Proceedings of the High Court are to be regarded as conveying an authoritative enunciation of the existing Law on the subject, it is high time to modify the Law, and to define in unmistakable terms the relative duties of the ordinary Courts of Law and the Court of Wards in this respect.

5. I enclose, for the Board's information, a copy of the letter* which my predecessor addressed to both the District Judges of South and North Tanjore, and which led to the reference made by the Judge of South Tanjore to the High Court.

* Dated 17th March 1873.

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From W. M. CADELL, Esq., Collector of Tanjore, to the District Judge of South Tanjore, dated 17th March 1873, No. 267.

Under Section 20, Regulation V. of 1804, as extended by Section 3, Regulation X. of 1831, I have the honour to forward, herewith, a List of Landed Proprietors in the four Taluqs of Tanjore Zillah, of which the inheritance has devolved on incapacitated heirs.

2. The total number of such properties, you will observe, is no less than 449, and the circumstances under which it has been found necessary to place this long list before you are these—

In the month of June 1871, the then Acting Head Assistant Collector, Mr. Bird, brought to my notice the doubtful legality of Revenue Proceedings which recognised private guardians for minor heirs to ryotwary holdings, who, under Section 4 of the Regulation above quoted, were not competent to take charge of, or to administer their own affairs during the period of their minority, and pointed out that, where the Court of Wards had not chosen to take such properties under their charge, it was necessary that guardians and managers should be appointed by the Civil Court, under Section 20 of the said Regulation, in order that they might be held legally responsible for the administration of the affairs of minor heirs.

3. I at once saw that this view of the state of the Law was correct, and that the enactment quoted at the head of this letter rendered it incumbent on the Collector to report to the Civil Court all cases of the above description in which the deceased proprietors had not themselves nominated guardians to their heirs. I accordingly called for complete lists of all cases in which heirs to landed properties were disqualified by minority or other causes, and directed that, in future, each such case as it arose be specially reported.

4. In pursuance of this Circular, lists of unwieldy dimensions in which, upon the erroneous assumption that the being of the female sex necessarily constitutes a disqualification, all cases of female heirs have been included, have, in the course of the last twelve months, been received from the four taluqs comprising the Tanjore Zillah. I have, however, excluded cases of the description last given, and confining myself to those only in which the heirs are disqualified by minority, as also to a few isolated ones of insanity, have had the accompanying list made out. I beg to request that, should you agree with me in thinking that the appointment by the District Court of a guardian in each of these cases is a proceeding enjoined by law, and, therefore, unavoidable, you will take the necessary steps towards that end. It is, of course, out of the question that the Court of Wards would undertake the management of all, or any of these numerous small properties.

5. Considering the extent to which, under the Hindu law of partition, sub-division of landed property is carried on in this country, the course of procedure above indicated with regard to every separate holding, however minute, of which the inheritance devolves on a minor heir, must doubtless be attended with much inconvenience; but, so far as I can see, the law as it now stands leaves no alternative. On this point, I would beg also to call your attention to the Proceedings of the late Sadr Court, dated 30th April 1853.

6. It was perhaps not the intention of the Legislature, in framing Regulation V. of 1804, to impose upon the Courts of Law the task of providing for the administration of a mass of petty ryotwary holdings; but the wording of Section 20, and of the subsequent enactment by which its scope has been enlarged, seems to admit of but one construction.

(True Copy.)

(Signed) D. ARBUTHNOTT,
*Collector.*



From H. WIGRAM, Esq., Registrar of the High Court of Judicature at Madras, Appellate Side, to F. M. KINDERSLEY, Esq., District Judge of South Tanjore, dated Madras, 16th August 1873, No. 1513.

With reference to your letter, dated 30th July 1873, forwarding copies of correspondence between yourself and the Collector, and requesting to be informed whether or no you are bound to take action, under Section 20 of Regulation V. of 1804, as extended by Regulation X. of 1831, in all cases brought to your notice, I am directed to forward, for your information, copy of the Proceedings of the High Court, dated 13th November 1871, on a reference from Salem.

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No. 1773.

*Proceedings of the High Court of Judicature at Madras, 13th November* 1871.

Read letter, dated 23rd March 1871, No. 8, from the Civil Judge of Salem, submitting four statements showing the particulars of landed property held by joint and single possessors which has devolved on minor heirs, and nominating guardians for the said disqualified heirs.

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The landed property referred to in the above letter as devolving on disqualified heirs appears to consist of a number of ryotwary holdings, some of which are in extent very insignificant. Until recently it does not appear to have been the custom to apply to the Zillah Court to nominate guardians except in the case of permanently-settled estates; but, under instructions from the Board of Revenue and the Government, Collectors have been directed to apply to the Zillah Court in all cases whether the landed property involved is temporarily or permanently settled. In the case of landed property devolving on joint possessors, some of whom are minors and disqualified heirs, it would seem (though this is not quite clear) that the joint possessors are all members of undivided families, and that in the majority of the cases some at least of the co-parceners are of age and qualified to manage.

2. The High Court have had under consideration the question whether the Regulations V. of 1804 and X. of 1831 were intended to confer jurisdiction on the Zillah Courts for the appointment of guardians when the Court of Wards might have intervened with the sanction of Government. A majority of the Judges are now of opinion that, when the Court of Wards can interfere, the Zillah Courts cannot, and the Chief Justice considers that the duty of the Court of Wards can only be avoided by an express Order of Government in each case. The Court are further of opinion that Section 20 of Regulation V. of 1804 was not intended to apply to the case of co-parceners.

3. Applying the views stated above to the cases now under reference, it appears to the High Court that the Zillah Court has no power to interfere, and the lists submitted by the Collector should be returned to him.

(True Extract.)

(Signed) H. WIGRAM,
*Registrar, Appellate Side.*

---

The letter of the Collector of Tanjore is submitted for the information of Government, with reference to G.O., dated 4th March 1873, No. 254.

---

Communicated to the Legislative Department, with reference to the Proceedings quoted by the Board of Revenue.

(True Extract.)

(Signed) J. STURROCK,
*Acting Under Secretary,*
for *Acting Secretary to Government.*

*Proceedings of the Madras Government, Legislative Department,*
*18th November* 1873.

No. 3. ORDER THEREON, 18th November 1873, No. 75.

Communicated to the Honourable the Advocate-General.

(True Extract.)

*Asst. Secy. to Govt.*

To the Advocate-General.

Exd. J. Wright.

Legs 1873 Dept.

# Govt. of {1873} Madras.

## REVENUE.

To

THE LEGISLATIVE DEPARTMENT,

&c., &c., &c.

Dated March 4th.

Recd. 9 6 [illegible] Encl.

G. O., 4th March 1873, No. 254.

MARCH.

Nos. 26-27.

No 29

*Law relating to Court of Wards.*—Suggestions of the Board of Revenue in their capacity of Court of Wards for its consolidation and amendment approved, and papers forwarded to the Legislative Department in view to the Bill being drafted.

With Orders

Legislative (1873) Dept

To

The Advocate Genl

Dated 18th Nov
Dept 2d Dec

1875.

Nos 1 to 3

Communicating

Proceedings of Govt, Revenue
Dept, dated respectively
the 4th March & 22d
Oct 1873 on the subject
of the proposed amendment of the
Law relating to the Court
of Wards.

29.6.94 (Rev)

First copy sent to Press.

Returned for signature.

Despatched in print.

NUMBER OF COPIES REQUIRED. { Order complete. / Letter only. / Order complete with Letter.

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

DESPATCH 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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