Proceedings of the Madras Government, Revenue Department, 1st May 1873.

No. 12. Read the following Proceedings of the Court of Wards, dated 5th April 1873, No. 537:—

Read the following letter from A. MACGREGOR, Esq., Collector of Malabar and Agent to the Court of Wards, to the Secretary to the Court of Wards, dated Calicut, 21st February 1873, No. 40:—

In continuation of my letter noted, printed with the Court's Proceedings dated 26th August 1872, No. 1698, I have the honour to report as follows.

16th August 1872, No. 195.

2. Referring to paragraph 10 of my letter, I visited Kavalapara and saw the minor in person, and made inquiries as to what further arrangements were required to be made in connection with the future management of the minor's household affairs. As stated in my previous report, the late Nair maintained an establishment of 150 servants, most of them being employed as his retinue. Mr. Baick when he visited Kavalapara reduced the establishment, as a temporary measure, to 69 persons. The total charge on account of this reduced establishment amounted to Rupees 371-12-0 per month.

3. I have again revised the establishment reducing the number of servants to 46, at a monthly cost of Rupees 184-8-0, as noted in the margin; and I am satisfied that this arrangement as revised is not more than is required to maintain her position so long as she remains at Kavalapara. When she goes to Trivandrum further reduction can be made.

		Rs.	A.	P.
(1)	1 Guardian	15	0	0
(2)	1 Tutor	3	0	0
(3)	9 Religious servants ...	49	8	0
(4)	9 Pensioners	54	0	0
(5)	26 Domestic servants ...	83	0	0
	46	184	8	0

The guardian, as the Court are aware, is the father of the minor. I have allowed him a remuneration considering his position as well as the necessity which exists of the guardian's constant presence in the minor's house, involving in some measure the neglect of his own affairs.

4. As to the servants employed in connection with the religious services of the house, two Brahmins are employed according to time-honoured customs, to perform ceremonies on two different accounts within the family-house, and three to perform religious services in the two temples appertaining to the house; the remaining four are maintained to perform certain ceremonies in connection with the death of the minor's mother, which occurred a few months before the Nair's death, and of the late Nair. The services of the last four will be required only for a year reckoned from the date of the Nair's death.

5. The nine pensioners (item No. 4) are either persons who formerly rendered services to the family for a long time, or who were dependants of the predecessors of the late Nair living upon their bounty, and were admitted to a pension by the late Nair. Their allowance consists of food, clothing, and in some cases of small sums of money in addition. I have arranged to pay them in future in ready money, and have so regulated their allowances as not to exceed or fall short of what they used to receive from the deceased. The practice of maintaining a certain number of pensioners at the expense of the family seems to have originated at a very remote period, and is one of the obligations devolving upon the representative of the family. It cannot, therefore, properly be put a stop to.

6. The remaining domestic servants number 27 involving a monthly salary of Rupees 86 ; of this 14 servants are to be supplied with food also. The amount estimated on account of household expenses is Rupees 114¾ monthly, and consists of Rupees 110½, the food expenses, and of Rupees 4¼, the amount required for the daily clothing of the girl. The provision made for the former item is ample, as it is sufficient to provide food for 20 individuals daily. Fourteen persons noted in the margin are among the number. They are to be permanent residents or inmates of the minor's house, and will have to be fed there. This allowance has been taken into consideration in fixing the monthly salaries of these servants in money.

1	Guardian.
1	Tutor.
1	Steward.
1	Storekeeper.
1	Chamber maid.
2	Maid servants.
2	Cooks.
5	Brahmins (performers of religious ceremonies).
14	

The sum set apart for the food expenses of the inmates has been so fixed as to leave a margin for feeding five extra people. This is intended to meet the cases of Brahmin travellers, visitors or beggars to whom the family was never known to be inhospitable. During the time of the late Nair, he set apart a special place for the entertainment of visitors, etc., and fed on an average 20 persons daily. Most of these were visitors of the deceased, and no expense on this account will have to be incurred hereafter. Only charges actually incurred will be accounted for and passed.

7. The above arrangements have been carried out from 1st October last. There is pending for disposal a quantity of perishable articles, such as clothes and bedding, etc., used by the deceased. These are now kept in several boxes which are secured in a room. None of them are suitable for the use of the minor. If sold they would fetch from Rupees 100 to 150. The sale of such articles, however, is hardly in accordance with the position of the family, and it would be better to instruct the manager to distribute them among the servants of the late Nair.

8. The establishment sanctioned in the Court's Proceedings, dated 26th August last, No. 1898, has been entertained, and the manager and his clerks have already entered upon their work described in my letter therein recorded. On examining the records of the deceased they were found to be imperfect and insufficient to aid in the preparation of the proposed register of lands, though I had expected otherwise. The lands held by the deceased on various tenures, Jenm, Kanom, Inam, and temple lands not discriminated, are leased in lots or groups to tenants on mortgages and simple leases on condition of their paying annually a fixed lump sum as rent for all. The only record that is likely to be of any use for our purposes is an individual account which shows the amount of rent payable by each tenant in money and kind (*i. e.*, paddy or other articles of produce). To ascertain, however, on which lands the rent shown as above is payable by a tenant, and what claim he possesses on all or any of the lands in his holding, a reference to the lease deeds is indispensable—a task of no small difficulty as the documents must have been executed several years back. Again, to get an idea as to the nature of the tenures upon which the deceased held the lands leased out by him,

it is necessary that recourse be had to the old title-deeds of the family, and the requisite information in cases where the original title-deeds may not be forthcoming will have to be obtained by reference to the old public accounts or records. The work will, therefore, occupy a longer time than was originally expected.

9. As it seems inadvisable to introduce any new arrangement for the management of the landed property, I have issued instructions authorizing the kariastas or agents of the several kalams or farms of the deceased to collect, until further orders, and on the terms heretofore prevailing, the arrears of the rent outstanding as well as the demand of the current year according to the accounts which they have in their possession, and to issue as usual supplies to the several temples and Uttupurahs (feeding-houses).

10. Besides the lands above alluded to there are certain other lands situated near the family-house of which the rent in paddy, money, and other sundry articles, in all amounting to about Rupees 2,800, is received directly into the deceased's house, and again lands yielding a rent, amounting to about Rupees 520, used to be managed by the deceased in person. I have now arranged to manage these lands under the direct supervision of the estate manager as was done by the late Nair.

11. I understand that the greater part of the liabilities left by the deceased (excepting encumbrances on lands) referred to in paragraph 8 of my letter of 16th August last, No. 195, consists of loans. I called upon the creditors by a public notice to represent their respective claims within two months, and claims to the extent of Rupees 66,000 have been put in. Most of these are on registered bonds. After ascertaining the amount of all established debts against the estate, I propose paying off all the sundry debts, by raising a loan from the Bank or other available source, at a moderate rate of interest on the security of the land.

12. As already alluded to, I addressed the Resident of Travancore and Cochin regarding the property situated within the Cochin territory. I beg to enclose copies of the replies. From the Diwan's letter it will be seen that the Sirkar positively object to our having anything to do with the affairs connected with the lands in Cochin.

13. The Diwan has, however, consented to furnish us, if necessary, with any information regarding the property, and the receipts and disbursements connected therewith. It will be for the Court to determine what further steps should be taken in this matter.

14. What we require in connection with the property in the Cochin territory is the following:—

(1.) A Nominal Register of all the lands in detail sufficient to identify them, setting forth the right of the minor on them, the tenant's right, and the amount of public assessment and rent payable to the minor.

(2.) A statement showing particulars of existing servants employed for the management of the property and the amount of their remuneration.

(3.) A statement showing particulars and charges in connection with pagodas and other charitable endowments.

(4.) Demand, Collection, and Balance statement annually.

Provided these accounts are supplied and a rateable share of the surplus allotted towards the maintenance of the minor, it seems hardly necessary to press the matter.

15. I do not admit that the extracts from legal authorities justify a refusal to admit the Court of Wards as guardian, though they may prove that the Court of Wards is not entitled to interfere as of right. As stated in the last of the three extracts "the guardian must obtain the sanction of the local authority to intermeddle, etc.," and that is exactly the course we have pursued.

16. The Diwan considers it certain that the British authorities cannot reciprocate; but the Court of Wards and Government have a discretionary power as to assuming estates, and would, I feel certain, refrain from doing so in the case of a small piece of land forming part of a large estate in a Native territory adjoining.

17. In any case I would suggest the Resident being directed by Government to ascertain that there is no fear of the estate in Cochin lapsing to the State owing to failure of the services alluded to by the Diwan in the last paragraph of his letter.

18. We are now maintaining an Uttupura (feeding-house) situated on the Cochin frontier. Its position is close to the Luckadi station on the south side of the river which now forms the boundary between our territory and Cochin. On this side there is a kalam (farm) attached to the estate. During the life-time of the deceased Nair himself, the said Uttupura used to be supplied with every thing necessary for its expenses from this kalam. The annual charges of this Uttupura are nearly Rupees 1,000.

19. It seems a question whether this Uttupura ought not to be supported from the surplus of the Cochin property, and I request the orders of the Court on the subject.

ENCLOSURE No. 1.

From T. SHANGOONY MENON, Diwan of Cochin, to the British Resident of Travancore and Cochin, dated Trichoor, 14th October 1872, No. 708.

IN acknowledging the receipt of your memorandum of the 13th August last, forwarding copy of a letter from the Collector of Malabar dated 9th idem, No. 1569, I have the honour to inform you that I had, previous to the receipt of the above communication, made other arrangements for the due custody and management of the late Kavalapara Nair's property situated within this territory, during the minority of his niece, and that I see no ground for disturbing these arrangements or for handing over the property to the Agent to be appointed by the Collector of Malabar.

(True Copy.)

(Signed) A. MACGREGOR,
Collector.

ENCLOSURE No. 2.

From T. SHANGOONY MENON, Diwan of Cochin, to the Assistant Resident in charge, dated Ernacolam, 21st November 1872, No. 796.

I HAVE the honour to acknowledge the receipt of your letter, No. 830, of the 5th instant, forwarding copy of one from the Collector of Malabar, dated 29th October, No. 2195, regarding the property of the Kavalapara Minor situated within this country.

Proceedings of the Madras Government, Revenue Department,
1st May 1873.

2. I beg to state, in reply, that there appears to me to be considerable difference between the owner's management of her property in this country and the management of such property by the officers of another Government in her behalf. The owner, for instance, is not interested in the alienation of the property and the prevention of the same escheating to this Government, should she unfortunately die young and heirless, which I trust she will not. The officers of the foreign Government may be so interested as the proceeds of the sale of the property will then naturally escheat to their own Government. I do not for a moment mean to insinuate that I have any fear, in the present instance, of the officers of the British Government authorizing any alienation for the purpose of defeating the just rights of this Government, but it must be admitted that there is nothing to prevent their doing so; and, as this is the first case of the kind which has occurred, I am obliged to be cautious and to look at the matter from every point of view.

3. The Collector in the 3rd paragraph of his letter states that the "succession to property, guardianship, etc., of foreigners is, I believe, universally admitted to be governed by the law of the country to which they belong." Should this be the case, and should the British Government be prepared to observe a reciprocity of practice in the case of all Cochin minors possessed of property within the British territory, by allowing the agents appointed by this Government to assume charge of such property, I would not have objected to comply with Mr. Macgregor's wishes in this matter. I find, however, that such is not the case, and that the British Government cannot maintain reciprocity in such matters. The regulation relating to the Court of Wards is silent on this subject; but that the manager or guardian appointed by one Government cannot assume charge of the real property of a minor situated in another territory is conclusively established by the annexed extracts from "Story's Conflict of Laws" and "Phillimore on International Law."

4. Should Mr. Macgregor wish at any time to have any information regarding the said property or the [illegible] and disbursements connected therewith, I shall be happy to furnish him with the same.

5. In this letter I have thought it unnecessary to allude to the fact of the lands belonging to the Kavalapara Nair having been originally granted to him by this Government for the performance of certain services.

Story's Conflict of Laws.

S.S.—500. * * * *

But in respect to immoveable property, foreign jurists as generally although not universally maintain the doctrine (whatever may be the rule as to moveable property) that the rights and authority of guardians are circumscribed by the laws of the territory of their appointment and do not extend to other countries where the immoveable property is situated. In other words, the laws *rei sitæ* are to govern; and a guardian in one country can claim nothing in another, except in the form and manner and under the regulations prescribed by the local law.

* * * *

S.S.—504. There is no question whatsoever that, according to the doctrine of common law, the rights of foreign guardians are not admitted over immoveable property situate in other countries. Those rights are deemed to be strictly territorial; and are not recognised as having any influence upon such property in other countries. * * *

Phillimore on International Law.

D.L.N. Fourthly, as to the power of guardians over immoveable property. Upon this point the English law is in accordance with the greatly preponderating opinion of foreign jurists in holding that the *lex rei sitæ* is to govern, and that the guardian must obtain the sanction of the local authority to intermeddle with or in any way administer or deal with the immoveable property of the ward.

(True Copies)

(Signed) A. MACGREGOR,
Collector.

Proceedings of the Madras Government, Revenue Department,
1st May 1873.

THE scale of establishment and the arrangements for the maintenance of the Kavalapara minor proposed by the Collector in this letter are approved. His proceedings reported in paragraph 9 are also sanctioned. The Court await further report regarding the debts of the deceased Nair.

2. The Court resolve to submit, for the orders of Government, the question as to the management of the landed property of the minor situated in the Cochin territory, with a view to a legal opinion being obtained if thought advisable. The scruples of the Cochin Sirkar, founded on the possibility of an escheat, are no doubt natural; but the rights of the Sirkar would undoubtedly be carefully respected by officers of the British Government, and the double management of the minor's property is inconvenient and unnecessarily costly, even though the Diwan's offer to afford to the Collector any information he may desire as to the receipts and disbursements connected with the property in Cochin be carried out. The Court of Wards request that Government may be pleased to cause the Cochin Sirkar to be addressed in this sense.

No. 13. ORDER THEREON, 1st May 1873, No. 443.

Miscellaneous.

THE Proceedings of the Court of Wards are approved. The desired instructions will be issued to the Resident in Travancore and Cochin in the Political Department.

(True Extract.)

(Signed) R. A. DALYELL,
Acting Secretary to Government.

To the Court of Wards.
" the Political Department.

Lieut. F. R. Bailward.

No. 1,698.

PROCEEDINGS OF THE COURT OF WARDS, dated 26th August 1872.

Read the following letter from A. MACGREGOR, Esq., Collector of Malabar, to the Secretary to the Court of Wards, dated Calicut, 16th August 1872, No. 195:—

IN continuation of my letter of the 29th ultimo, No. 180, I have the honour to report upon the property left by the deceased Nair Chief of Kavalapara. I regret that I am not yet in a position to submit a full report, and shall therefore treat of the materials so far as they have been gathered.

2. The great bulk of the deceased's landed property is situated in the taluqs of Walluvanad and Palghaut and a small portion in the territory of the Cochin Sirkar.

3. The whole landed property may be divided into four classes:—

First.—Lands, the Jenm property of the deceased, which are held by tenants upon simple lease without any kanom or other liens.

Second.—Lands, the Jenm property of the deceased, held by others on kanom or mortgage.

Third.—Lands, the Jenm property of others, held by the deceased on kanom.

Fourth.—Lands held free of assessment in connection with certain temples belonging to the family.

4. I am not in possession of sufficient data for estimating separately the income derived from the first, second, and third classes of lands, and shall therefore state it in the aggregate:—

			RS.	A.	P.
The annual income from the first, second, and third classes of lands			22,336	13	6
Do.	from Inam lands		789	1	0
Do.	from Miscellaneous sources		1,516	15	2
		Total...	24,642	13	8
From lands in the Cochin territory			3,130	8	1
Do.	Miscellaneous sources		271	8	3
		Total...	3,402	0	4
		Grand Total...	28,044	14	0
Add Malikhana allowance...			4,567	10	1
		Total...	32,612	8	1

5. There are a number of institutions, religious and charitable, maintained by the family both in this district and in the Cochin State. They are as follows:—In Malabar, twenty-five Temples, two Uttoopurahs or Brahmin feeding houses, five Water pandals or sheds for distribution of water and buttermilk in the dry season; and in the Cochin territory, five Temples and one Uttoopurah.

Some of the above temples are not solely maintained by the family, as a long standing custom requires only that they should perform at their expense certain ceremonies.

6. The estimated expenditure in connection with the above lands and institutions is as noted below :—

			RS.	A.	P.
Expenses for maintaining the Temples in this district			6,376	12	0
Do.	do.	Uttoopurahs	1,762	15	11
Do.	do.	Watersheds...	46	1	9
			8,185	13	8
Do.	do.	Temples in Cochin State	679	0	7
Do.	do.	Uttoopurahs	987	9	6
			1,666	10	1
Land assessment payable by the family in this district			3,423	8	10
Do.	do.	to the Cochin Sirkar	421	6	0
Rent payable to the Jenmies on account of the lands 3rd Class...			235	3	10
		Total ..	4,080	2	8
		Total expenditure...	13,932	10	5

The above total represents all the expenditure except Household expenses as well as the charges on account of Agents and Servants employed in the management of affairs of the estate.

	RS.	A.	P.
Total receipts	32,612	8	1
Expenditure	13,932	10	5
	18,679	13	8

Deducting from the gross receipts the expenditure as above set forth, the net balance will be Rupees 18,679-13-8.

7. As regards the charges alluded to in the latter part of the paragraph above, I understand they were incurred under no fixed rule or system. The establishment kept up by the deceased consisted of more than 150 servants, some of whom received only food and clothing.

8. The deceased appears to have been very extravagant and was far from competent to manage his own affairs. The result is seen in the fact that he has contracted debt of nearly 75,000 Rupees, besides encumbering within the last few years, the 2nd Class of lands above referred to, with a large amount of kanom or mortgage claims.

9. No estimate, exact or approximate, can now be made of the extent of the mortgages thus raised. The head Agent, who is married to the daughter of the deceased, as well as the deceased's wife, are well off, and I have no doubt that the property was burdened with the knowledge of the deceased for the purpose of leaving these people, otherwise entitled to nothing, well provided for.

10. As regards the Household expenditure, it seems necessary that a proper officer should be deputed to the place, to regulate it on a proper footing, by discharging the unnecessary servants and retainers.

Mr. Buick was attending to this matter, when he was suddenly transferred to the Coimbatore District. I shall, however, have this part of the business done without delay, and report the result in my next report.

11. Under the head of Miscellaneous Receipts from this District and Cochin territory, occurs an item "Rent on Cherumars'" or slaves as noted in the margin. I have not been informed of the exact nature of these receipts, but the practice seems to be opposed to the spirit of the Slavery Act, and we shall probably have to abolish it altogether.

From Malabar...	101	5	8
,, Cochin	37	11	5
	139	1	1

12. The receipts and expenditure as detailed in paragraphs 4 to 6 are derived and incurred for the most part in kind, and the money value is shown for facility's sake; the rate being calculated according to the market value of paddy.

13. Besides the household establishment, there are scattered about the extensive estates of the deceased, a number of servants attached to the several granaries, for the collection of rent in kind.

It may be advisable to entrust the collection of the rent to the Amshom officials, paying them a percentage of the collections according to circumstances. I shall report upon the question hereafter.

14. The movable property of the Estate consists of the following :—

	RS.	A.	P.
* Gold and Silver ornaments approximately valued at	5,000	0	0
Brass and Copper utensils and sundries valued at	5,000	0	0
	10,000	0	0

* Secured in the Palghaut Treasury.

It does not appear that the deceased at the time of his death was in actual possession of any considerable sum of money in cash, or any large quantity of paddy. This is a fact hardly credible, considering the extensive property that had been under his management, and shows that peculation was carried on to a great extent while he was on his death-bed. There seems no remedy for this. The head Agent states that a considerable amount of paddy was misappropriated by two agents who have since died.

15. In order to complete the examination of the Receipts and Expenditure Accounts, the chief Agent of the deceased has been required to appear before me with his accounts. The result of further enquiry will be reported in due course.

16. As to the future management of the landed property, I propose to prepare individual registers for all the lands, with reference to the four classes above alluded to, showing the extent, rent, assessment and other requisite particulars in each case. I cannot say what extent of information is available from the deceased's records to aid me in this direction. There are four large Record-rooms which have been sealed up, the examination of which will occupy a fortnight. Where the requisite information is not forthcoming, a regular paimash will have to be made to complete the registers.

17. The Board are aware that cultivated lands in Malabar lie scattered in small pieces, and I consider that it would be a most proper expenditure of the funds of the estate to have a regular survey made.

18. I am not aware of the terms on which the Survey Department would undertake such work.

The areas of the lands in the aggregate will be small compared with their number. Hence I fear that the preparation of the proposed Registers will take up some time.

19. To remove the family records which, as already stated, are voluminous, to the Huzur or the Head-Assistant Collector's office would be inconvenient; and it seems therefore necessary that the Registers should be prepared at the place where they now are. To have the Registers prepared, as well as to perform certain other duties in connection with the management of affairs, it is necessary that the following scale of establishment should be entertained at present :—

	RS.	
1 General Manager...	75	per month.
1 Gumastah	20	,,
3 Gumastahs on 15 Rupees each	45	,,
2 Peons at 5 Rupees each	10	,,
Total...	150	

20. The Head-quarters of the Manager should be at the family house, and it would be his duty occasionally to visit and enquire into the management of the several Kalams or Farms in the owner's lands, Temples, Uttoopurahs, etc., and he should be allowed travelling batta at the rate granted to servants of his position in the Revenue Department. He would also superintend the household affairs.

Probably the establishment at its full strength will be required only for the first one year, and might then be revised and reduced according to circumstances.

21. To fill the office of the Manager, I propose to appoint one Payedath Achuda Menon, who is now an Inspector on 40 Rupees in the Escheat Establishment. He formerly held the post of Sheristadar on that Establishment, on Rupees 170 per mensem, having been reduced to his present post by the Government Order of last year, which curtailed the scale of Escheat Establishment. He is a servant of thirty years in the Revenue Department, out of which nine years were spent in the Escheat Department, where his services have been well spoken of by his immediate superiors, the late and the present Deputy-Collectors in charge of the Escheat Settlements.

The experience gained in that branch is, I may observe, particularly valuable for the Manager of a large landed estate. Should the Court agree, I request special sanction to the appointment.

22. As regards the arrangements for the protection of the Minor's person and her education, Mr. Buick, who has seen the girl in person says, she has a healthy appearance, though she suffered from epilepsy when two years old, and recommends that she should be sent to the Majarajah's Girl School at Trevandrum. I had already proposed to myself the same course, and have written to the Resident for information on the subject.

I have, as stated in my previous report, appointed the father of the girl as her guardian for the present, and I see no better arrangement. I shall hereafter address the Court separately on this question.

23. I request early sanction of the Court for the entertainment of the establishment noted in paragraph 20 above.

I may add, that I have just been informed that a number of Civil Suits, in which the deceased is either a plaintiff or defendant, are pending in several of the Civil Courts. I have received no definite information on the subject, and have directed the Government Vakil to furnish me with particulars, as well as to apply to the Courts to permit the Court of Wards to represent the deceased. A full report in the matter of these suits will be submitted in due course.

P.S.—I am not aware what rule obtains in the Cochin territory with regard to the property of the deceased proprietors, having no qualified heirs to manage it; but I have addressed the Resident on the subject, and presume that no objection will be made to recognizing the Agent of the Court of Wards.

THE Court of Wards entirely approve and sanction the arrangements proposed in his letter, which appear to have received very full consideration from the Collector.

2. He has rightly addressed the British Resident, before taking any steps in regard to so much of the deceased Nair's Estate as lies within the territory of Cochin.

(A true Copy and Extract.)

(Signed) H. E. STOKES,
Acting Sub-Secretary.

To the Collector of Malabar.

Exd G. A. Turton.

Enclosure RC No 1076/73

1872.

Court of Wards,

MADRAS.

PROCEEDINGS, 26TH AUGUST 1872, No. 1,698.

Encl.

Received

AUGUST.

No. 1,698.

Estate—of deceased Nair Chief of Kavalapara, in Malabar District, now under charge of Court of Wards.—Arrangements proposed by Collector in regard to — approved and sanctioned.

27-7-15
28-3-16
27.8.9
4-2-36 D

Original

MADRAS RECORD OFFICE.

Government Records.

Revenue, Department.

G. O. (Printed).

Dated 1st May 1873.

No. 443