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GOVERNMENT OF MADRAS

Revenue DEPARTMENT

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[Signature]

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From C. A. GALTON, Esq., Secretary to the Court of Wards.
To P. O'SULLIVAN, Esq., Assistant Secretary to Government, Legislative Department.

SIR,

With reference to G. O., of the 18th March 1874, No. 9, forwarding for the Board's consideration a Bill to amend and consolidate the law relating to the Court of Wards, I am instructed to offer the following remarks. It will be most convenient to consider the Bill section by section, and indicate the amendments which the Board deem advisable with reference to each.

2. *Section 2.*—The Board observe from the Schedule annexed to the Bill that it is proposed to retain four Sections of Regulation V. of 1804 which, however, have not been embodied in the Bill. They are of opinion that fresh legislation should either take the form of a Consolidating Act embodying every provision of the law affecting Wards of the Court or of a short amending Act merely dealing with such portions of existing enactments as have proved defective. The concluding paragraph of the Statement of Objects and Reasons indicates the principle on which the sections referred to have been left unrepealed, but in enumerating the sections so retained there is apparently some error, as Sections 23 and 24 do not deal with proceedings which culminate directly in an appeal to the High Court, whereas Section 20, which it is proposed to annul, does deal with such proceedings. Furthermore, in the event of Section 20 of Regulation V. of 1804 and Section 3 of Regulation X. of 1831 being unreservedly repealed, there will be no provision of the law under which the Civil Courts can proceed for the appointment of guardians in the case of Estates of disqualified heirs which the Court of Wards do not deem it advisable to take under their management.

3. The difficulties which have arisen in connection with this point are fully set forth in the Proceedings of Government, Revenue Department, dated 1st February 1872, No. 203, but the present Bill instead of applying a remedy apparently deprives the Civil Courts of all power of interference. Cases will probably often arise in which the appointment of a guardian is desirable, but in which the Court of Wards may not deem it advisable to assume the management of the property of incapacitated proprietors. The improvement and not the repeal of the existing law, therefore, is what is required. A simple verbal alteration of Section 3, Regulation X. of 1831, would, the Board think, suffice to meet all the requirements of the case. The difficulties alluded to arose out of the use of the phrase "not subject to the jurisdiction of the Court of Wards" in the section just quoted. The substitution of the phrase "not taken under the management of the Court of Wards" would remove the obscurity and enable the Civil Courts to nominate guardians, in every case in which the Court of Wards decided not to exercise their powers, upon the report of the Collector or any other credible persons as provided in Section 20, Regulation V. of 1804. The Board on the above grounds advocate the retention of these two Sections and their embodiment in the new Act, leaving the improvement suggested for future consideration, if the amendment is beyond the competence of the Local Legislative Council.

4. *Section 3.*—The Section should end at the words "for the time being;" the remainder of the Section appears to be unnecessary, and might lead to doubts regarding the legality of proceedings of the Board under other Acts containing no such provision.

5. *Section 4.*—The enumeration of disqualified persons given in this section is not sufficiently comprehensive. The Board prefer the definition given at Section 194 of the North-West Provinces Land Revenue Act (No. XIX. of 1873) except that minors, females and "persons incapacitated by physical defects or infirmities from managing their own estates" should be held to be *ipso facto* disqualified; in the case of persons convicted of a non-bailable offence and disqualified by vice or bad character, and in the case of persons applying to be held disqualified from managing their estates, the Local Government should decide upon the advisability of interference; whilst in the case of Lunatics and Idiots, the addition of the words "declared to be such by Act

XXXV. of 1858" appears to be necessary.

7. 20 and 22 of Regulation V. of 1804 have, therefore, no power to interfere with

provisions of that Act. It is noticeable, however, that the Chapter of the North-West Provinces Act relating to the Court of Wards gives jurisdiction over Lunatics and Idiots without reference to the special procedure laid down in regard to such persons.

6. The Board would leave the limit of age as regards minority unchanged, but would add a Clause empowering the Collector to settle any dispute on that subject, similar to the provisions contained in Section 22 of Act No. IV. of 1870 of the Bengal Council. Recent correspondence regarding the disputed age of the Barwah Minor, in connection with a protest against any further retention of the management of that estate, has demonstrated the necessity for some such provision.

7. Section 5.—The Board would extend the provisions of this Section to all landed property whatsoever, whether paying revenue direct to Government or not, so as to embrace the case of Rent Free Inams. The sole question should be—Is any part of the property land? If so, the Court should be empowered to assume the management, provided the value exceeds a certain limit. On this point the test to be applied in the case of land held on Ryotwari tenure must be different from that applied in the case of Inam lands or lands held on other than Ryotwari tenure. As regards the former, the amount of the annual revenue payable to Government should be the criterion, and the Board would fix Rupees 1,000 as the limit; as regards the latter, the annual rent-value, to be determined by the Collector in the mode prescribed by Section 38 of the Local Funds Act, should be the test, and the limit should be fixed at Rupees 3,000. The Section should accordingly be amended as follows:—"Whenever any disqualified person becomes or is the owner of landed property in respect of which annual revenue to the amount of Rupees 1,000 is payable to Government, or the annual rent-value whereof, to be determined by the Collector in the manner prescribed by Section 38 of the Local Funds Act, amounts to Rupees 3,000, the Court of Wards may control and superintend such person and property."

8. Further, the concluding portion of the section requires modification with reference to the remarks above on Section 2. To remedy the defect alluded to, it should be expressly declared that only such persons as the Court of Wards have taken under their control shall be deemed to be "subject to the jurisdiction of the Court."

9. Section 7.—The addition of the words "who may under the preceding section become" should be added after "whenever a disqualified person" and from the words "but so as to interfere", should be omitted as likely to give rise to complications, besides being vague. The Court should be empowered to take charge of the whole estate and not merely "such measures in the supervision as may be necessary, etc." Further, a clause should be added authorizing the Court to retain the management of an estate, the property of two or more co-parceners or joint possessors, until the youngest of them has attained his majority. The Barwah Estate in Ganjam is a case in point. The whole Section must be re-cast.

10. Section 8.—The old Regulation requires that "all the circumstances of the case" should be reported. It would be better to say, "such report shall set forth all the circumstances of the case, and shall distinctly state the following particulars."

11. The concluding clause should be so altered as to enable the Court of Wards to set aside the appointment by Will on due cause shown. Sections 31 of the Bengal Act and 199 of the North-West Provinces Act confer similar powers.

12. Sections 10 and 11.—The words in brackets should be omitted and the following addition made "submitting a copy thereof to Government for confirmation." This is in accordance with the law in force both in Lower Bengal and the North-West Provinces, see Section 30 of the enactment relating to the former and Section 196 of that relating to the latter.

13. Section 12.—Provision should be made for the relinquishment of management at any time, should it appear desirable under the orders of the authority competent to direct the assumption

repealed so much of Sections 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

tion of management, viz., in the case of Lunatics and Idiots, under the orders of the Court of Wards; and in the case of violent persons, under the orders of the Civil Court; and in the case of violent persons, under the orders of the Court's jurisdiction, under the orders of the Court.

14. A slight verbal alteration also appears requisite in this section. From the use of the copulative conjunction "and" instead of the disjunctive "or" it would appear that both the contingencies specified must be present to warrant the Court in taking action, whereas, in the event of a report having been transmitted and the Court having at first abstained from interference thereon, it should be clear from the wording that the Court is competent to interfere at any subsequent period.

15. Section 15.—"On his or her behalf." The interpretation clause, Section 5, renders the addition of the feminine gender unnecessary.

16. "Board of Revenue" should be "Court of Wards."

17. Section 17.—The appointment of Managers should be made by the Collector, subject to confirmation by the Court of Wards; provided that if a married woman desires to nominate or exclude her husband, her wishes should not be countenanced without reference to the Court. The power to exclude the husband is given by Clause 8 of the old Regulation. This modification of the Section renders unnecessary Section 18, which should accordingly be struck out.

18. Section 19.—The words "in addition to the Manager" are objectionable, because they might lead to the supposition that the Manager was associated with the guardian in the control exercised by the latter.

19. With reference to Clause 2, it should be competent to the Court to assign a salary whenever they think it expedient to do so. The enquiry which would determine that no person could be found willing to execute the office gratuitously would have to be very exhaustive, and the liberal minded person, when found, might prove in the end more expensive than a salaried guardian.

20. With reference to Clause 3 of this Section, exception should be made in favor of the mother of a ward or a testamentary guardian, who should be eligible subject to the Court's confirmation—*Vide* Section 55 of the Lower Bengal Act.

21. Section 20.—The following words should be added "unless for special reasons the Court determine that such guardians shall be males." This will meet the case of Nair female minors in Malabar, in regard to whom a difficulty has been experienced in finding suitable guardians of the female sex.

22. It should further be enacted that if the disqualified proprietor be of the male sex his guardian may be either male or female until the former has completed his seventh year, after which the latter must be of the male sex.

23. Section 21.—This Section should be omitted. The Lower Bengal Act, Section 35, sanctions the combination of the offices in one person, and very often in the case of small Estates such an arrangement might prove convenient.

24. Section 22.—For "Male minor" substitute the phrase "disqualified proprietor subject to the Court."

25. Section 26.—The Board are of opinion that the Manager should be declared liable to dismissal by the Collector subject to appeal to the Court.

26. Section 27.—The power of appointment of the requisite establishment should be vested in the Collector, subject to revision by the Court. The provisions of Clause 5, Section 11, of the old Regulation, which have been retained, have not, the Board believe, been acted upon for years.

27. Section 28.—The terms *Malguzary* and *Lakhiraj*, which include *all* land, are quite unnecessary.

28. The concluding portion of the Section should be more general, and should specify in whose charge property excluded from the Manager's jurisdiction should be placed: the alteration might be as follows:—"Excepting only such property as has been set aside by the Collector for such person's use and comfort, which shall be in charge of the guardian."

29. *Section 33.*—The reason of the omission from the guardian as is the case now under 3 is it is obvious that the reasons which render it force to that of guardians. It is possible that in the Statement of Objects and Reasons, it was intended to retain Section 21, which certainly deals with proceedings culminating in an appeal to the High Court. If so there is an error in the Schedule which should be remedied, and, as already stated, the Board cannot help thinking that such is the case.

30. *Section 40.*—The Board would omit the words from "who neglects" to "provisions of this Act." It may be desirable in some instances to remove a guardian notwithstanding that no specific offence is alleged against him. The concluding words from "whether the guardian" are also rendered unnecessary by the modification of Section 8 already suggested, under which nominations by Will are made subject to the confirmation of the Court.

31. *Section 42.*—This Section has been transferred from the old Regulation, and no doubt at the time of its enactment the provision was useful, but it is now obsolete and should be omitted.

32. *Section 43.*—The Board are of opinion that the section would be clearer if expressed in words to the following effect:—"Property subject to the jurisdiction of the Court shall not be liable to attachment or sale on account of arrears of Land Revenue or other taxes accruing whilst such Estate is under the management of the Court of Wards, but any surplus which may exist in years previous or subsequent to the accrual of such arrears shall be devoted to liquidating them, and, in the event of the Estate being sold or taken from the Ward by a decree of a Civil Court, the arrears shall continue to be a charge against such Estate." The contingency of an Estate passing out of the hands of the Court of Wards under a decree of a Civil Court must not be lost sight of, and Section 4 of the Lower Bengal Act makes a similar provision. The Board consider that the last paragraph of Section 43 relating to the proprietor's allowance more fitly finds its place in the Sections prescribing the amount of such allowance, viz., 44, 45, and 46, and should be embodied therein.

33. *Section 43A.*—In their Proceedings of the 23rd February 1872, No. 369, the Board advocated the absolute repeal of Section 2, Regulation X. of 1831, which protects the Estates of minors not under the charge of the Court of Wards, though subject to their jurisdiction, from sale during their minority for arrears accruing during such minority. As, however, it is now proposed to fix a limit of value so as to restrict the number of Estates which can become subject to the jurisdiction of the Court the Board are disposed to continue the concession to all such minors, inasmuch as it will be competent to the Court at any time to step in and assume the management so as to protect Government from loss in the event of such Estates falling into difficulties, but, in the case of minors who could not become subject to the Court's jurisdiction, interference would be barred and the Government would have no guarantee that their dues would be liquidated. The section should run as follows:—"No landed Estate, the property of a minor who might become subject to the jurisdiction of the Court, shall be sold for arrears of revenue accruing during his minority."

34. *Sections 44 to 46.*—These Sections are somewhat involved and obscure. They fix the Ward's allowance at a certain per centage on the assessment, but virtually give the Collector power to augment or reduce it at his discretion. The wording might be simplified as follows:—

"As a general rule, a sum equal to 10 per cent. on the average rent value of the Estate shall be allowed for the support of the Ward, and of such members of his family as are entitled to maintenance at his expense. If this sum is more or less than the Collector considers sufficient, it shall be competent to him to increase or reduce it, subject to the orders of the Court, but such increase or reduction must be forthwith reported to the Court." The concluding clause of Section 43 should be inserted here. "The allowance shall be paid in years of deficient as well as in years of surplus produce." The Board consider it preferable to fix the allowance at a certain proportion of the rent-value, as tending to make the standard a more liberal one than if calculated with reference to the assessment.

a clause providing for security being taken of the old Regulation, is not apparent, and in the case of Managers apply with equal principle enunciated in the last clause of the

35. *Section 47.*—This provision appears to be quite unnecessary; it follows as a matter of course.

36. *Section 48.*—After "Government Securities, Stocks, or Shares guaranteed by the Government of India, as are approved by the Court." See Section 50 of the Lower Bengal Act.

The employment of the surplus is left by the section, as it at present stands, entirely in the hands of the Collector. It should run "the Court of Wards or the Collector may employ," and the words "by the Collector" should be inserted before the words "without the previous approval of the Court."

37. *Section 51.*—The interest should be receivable by the Court or by the Collector instead of by the latter only. At present such investments are generally made and such interest received by the Court at Madras.

38. *Section 53.*—This section should be omitted, as being likely to lead to complications and raise obstacles in the way of compromising debts.

39. *Section 57.*—This Section contains no provision for enforcing the Collector's order. Practical experience has shown that the Collector's orders in regard to the Minor's education are sometimes set at naught, and the Minor abetted by his relatives in playing truant. The minor proprietor of the Barwah Estate is a case in point; vain endeavours have been made to induce him to attend school, and for a long period his allowance was stopped by the Court, but all to no purpose. The only remedy which suggests itself to the Board as likely to prove effectual is to render persons abetting a minor in disobedience to the Collector's orders liable to penal consequences, and a penalty should be attached to the offence as has been done in the case of those infringing the provisions of Section 61. Although Section 189 of the Penal Code might not exactly meet the circumstances of such a case as is above described, there is sufficient analogy to warrant the Board in suggesting that a penalty equal to that provided by the above Section namely simple imprisonment for a term which may extend to three months or fine which may extend to Rupees 500 or both should be attached to the abetment of a minor in disobedience to the Collector's orders.

40. *Section 60.*—This section should be held applicable also to the children and younger brothers (being Minors) of disqualified proprietors. The circumstances under which the Purla Kimedy Estate remains under the management of the Court of Wards supply an illustration.

41. *Section 63.*—This section is out of place and would more appropriately follow Section 59.

42. The Board have now reviewed the provisions of the Bill, as it stands, consecutively; it only remains to suggest certain additions which appear to them desirable.

43. A section should be added to Part I. after Section 15, authorizing the Court to charge commission at the rate of one-and-a-half per cent. on the net collections after deducting all charges except the Government kist, for the superintendence of all Estates under their control. This charge was first made on the authority of G. O., dated 3rd March 1820, No. 150, the commission being paid to Collectors in compensation for the extra duties imposed upon them and the trouble involved in the management of Estates under the Court of Wards. Upon the revision of their salaries in 1836, however, the commission was carried to the credit of Government under the authority of G. O., dated 21st March 1836, No. 327. The Board are of opinion that the charge should now be sanctioned by Law.

44. Further, provisions similar to those contained in Section 203 of the North West Provinces Land Revenue Act seem very desirable, inasmuch as it gives the Court power to mortgage or sell a portion of the property when such a step would be beneficial to the Ward's interests. Section 68 of the Lower Bengal Act confers somewhat similar powers though it is not so comprehensive and simple. The Board recommend, therefore, the embodiment in Part I. (where it most fitly finds a place) of a Section based on Section 203 of the North West Provinces Act.

45. The provisions of Section 198 of the North West Provinces Act also commend themselves to the Board, and the insertion of a similar Section in Part I. is expedient.

Acting Sub-Secretary.

Exd. G. A. Turton.

Ms. A. 9. 2. 5. 21
185-1874. 244

MADRAS.

FROM ACTING SUB-SECY. TO THE CT. OF WARDEN,
T. ASST. SECY. TO GOVT., LEGISLATIVE DEPT.

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Filed 22nd July 1874.

Enol

JULY.
No. 1,918.

Law relating to Court of Wards.—
Remarks submitted to Government on provisions
of Draft Bill to amend and consolidate —.