

Revenue (1892) Department.

Miscellaneous

G.O., No. 2767.

Confidential No. 536.

DATED 10 June 1892

[Despatch Abstract.]

Requesting the Board of Revenue to submit
suggestions for the amendment of Regulation
V of 1884.

BACK PAPERS.

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

FURTHER PAPERS.

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

BOARD OF REVENUE (LAND REVENUE), 11TH MAY 1892, No. 217.

CONFIDENTIAL.

PROCEEDINGS OF THE BOARD OF REVENUE. (LAND REVENUE).

FULL BOARD.

READ—again Proceedings of the Board of Revenue (Land Revenue), dated 4th February 1892, Mis. No. 786.

ABSTRACT.—Communicating, with remarks, to the Collector of the Nilgiris, G.O. approving and sanctioning Board's instructions to publish a notice in the District Gazette that the property belonging to the Nelliylam estate will be handed over to Puttiah and Belliah unless restrained by an injunction of a competent court of law within a prescribed time.

READ—again the following Proceedings of the Board of Revenue (Land Revenue), dated 13th April 1892, Mis. No. 2312:—

Read—the following letter from J. D. REES, Esq., C.I.E., Collector of Nilgiris, to the Secretary to the Court of Wards, dated Ootacamund, 9th April 1892, No. 123 B:—

With reference to the Proceedings of the Court of Wards, dated 4th February 1892, No. 786, Miscellaneous, I have the honor to enclose copy of the notice published in the Gazette of this district for the last month. Copies of this notice were also forwarded to the Collector of Malabar and to the publisher of the Mysore Gazette for publication in their Gazettes.

2. I beg to request the Court's orders whether any indemnity bond or other document should be taken from Belliah and Puttiah on handing over the estate, and what other formalities, if any, should be observed. So far as I am aware, no records on this subject are available here.

3. If an indemnity bond or other document is to be taken or made, I beg the Court will be pleased to have one drafted by the Government Pleader and sent to me.

ENCLOSURE No. 1.

Notice is hereby given that the Collector of Nilgiris and Agent to the Court of Wards will hand over the Nelliylam estate together with all the effects of the deceased Linga Raja Arasukal to Puttiah and Belliah, sons of Nanjamma, step-sister of the said deceased Linga Raja Arasukal, unless restrained by injunction of a competent court of law within three months from this date.

NILGIRI COLLECTOR'S OFFICE,
OOTACAMUND,
1st March 1892.

(Signed) J. D. REES,
Collector of Nilgiris and Agent to the Court of Wards.

Resolution—dated 13th April 1892, Mis. No. 2312.

The Collector's letter read above will be forwarded to the Government Pleader for favor of advice.

2. With reference to Mr. Powell's letter of the 7th January last, No. 15, the Collector of Nilgiris was directed to publish a notice to the effect that the property will be handed over to Puttiah and Belliah unless restrained by the injunction of a competent court of law within three months from the date of the notice. The Collector inquires whether any indemnity bond should be taken from Puttiah and Belliah before handing over the property to them, and whether any other and what formalities should be observed. For guidance in this and similar cases in future the Board requests the favor of the Government Pleader's opinion on the questions raised by the Collector. If an indemnity bond is considered necessary, it is requested that a form of the bond may be furnished.

(A true Copy and Extract.)

(Signed) H. A. SIM,
Acting Secretary.

To the Government Pleader, with Collector's letter and its enclosures, and Board's Proceedings, dated 15th January 1892, No. 306, Mis., 4th February 1892, No. 786, Mis., and 24th February 1892, No. 1336, Mis., and their enclosures, all in original, to be returned.
Collector of Nilgiris.

READ—also the following letter from Dewan Bahadur S. SUBRAMONEYA IYER, Acting Government Pleader, Madras, to the Secretary to the Board of Revenue (Land Revenue), dated 2nd May 1892, No. A.I. :—

With reference to the Board's Proceedings, dated the 13th day of April 1892, No. 2312, Mis., I have the honor to submit the following :—

OPINION.

1. The question, referred to me for opinion, is whether any indemnity bond should be taken before making over the property of Linga Raja, the late ward of the Court, to Puttiah and Belliah (whose title to succeed him is questioned by the stepmother), and whether any and what formalities should be observed in this and other similar cases.

2. To help us in arriving at a proper conclusion as to the best course to be adopted in such cases, it is necessary to ascertain the true position of the Court of Wards, the Collector, manager, and others acting under their authority.

3. Regulation 5 of 1804 enacts provisions for the care of the person and property of incapacitated proprietors "under the sanction of public authority and of legal provisions" (preamble). The public authority, so constituted, is the Court of Wards. The Court is authorised, with the sanction of the Governor in Council, to assume superintendence over the person and property of certain descriptions of incapacitated proprietors. The Court is empowered, subject to the final decision of the Governor in Council, to select and appoint proper managers for the custody and management of the property and fit guardians for the care of the person of such proprietors and to take due means for the proper execution of the trusts reposed in such managers and guardians (sections 2, 8, and 19). In the case of female proprietors, the Court has to determine whether they are fit to be put into possession and management of their estates (section 3). The Court has power to

grant permission to disqualify landholders to adopt (section 25). It rests with the Court to sanction the disposal of the property of their wards (section 15) as well as the payment of their debts (section 17). The Court may entertain and inquire into complaints against Collectors, guardians, and managers, and pass judgment, subject to appeal to the Court of Sadr Adawlut, and enforce penalties which have become payable according to the engagements executed under the Regulation.

4. The Court of Wards is, thus, as their very designation indicates, a public official body possessing functions which are either judicial or such as require the exercise of discretion.

5. Many of these powers are substantially what the Court of Chancery possessed before, and what the High Court of Justice possesses now, in England. They are similar to those that have been recently conferred by the Guardian and Wards' Act on the courts of this country in respect of persons not subject to the jurisdiction of the Court of Wards. The mere fact that, having regard to the peculiar circumstances of this country, the legislature considered it expedient to invest the Board of Revenue with such functions cannot take away their judicial character.

6. It is well established that an authority exercising such powers is not liable for errors of judgment in matters within their jurisdiction. The law on the point and the reason of it is thus stated by Lord Brougham in *Ferguson versus The Earl of Kinnoull* (9 Clark and Finely at p. 289): "The Courts of Justice, i.e., the Superior Courts, Courts of General Jurisdiction, are not answerable either as bodies or by their individual members for acts done within the limits of their jurisdiction. Even inferior courts, provided the law has clothed them with judicial functions, are not answerable for errors of judgment, and where they may not act as judges, but only have a discretion confided to them, an erroneous exercise of their discretion, however plain the miscarriage may be and however injurious its consequences, they shall not answer for. This follows from the very nature of the thing. It is implied in the nature of judicial authority and in the nature of discretion where there is no such judicial authority." So far the law is clear.

7. The next matter for consideration is whether it is within the province of the Court of Wards to determine who is the person that is entitled to take a deceased ward's property as his heir and successor. The Regulation is entirely silent on the point. On the one hand, it may be said that, on the death of the ward, the Court becomes *functus officio*, and their officers having possession of the property are bound at their peril to put the true owner in possession, and that the obligation of such officers is the same as that of any private individual who finds himself in possession of another man's property (*Hiort versus Bott*, L.R. 9 exch. 86), and that they are answerable to such owner if they have parted with possession of the property in favor of one who had no title even though they did so through a *bona fide* mistake. On the other hand, it may be urged that it is but reasonable to hold that the Court has, by implication, the power to decide who the person entitled as heir and successor is, not finally, but only incidentally in the discharge of their duty under the statute. It is very difficult to decide which of these contentions is sound. I shall not at all be surprised, when the point comes to be discussed in the civil courts, if the former view prevails, though my own leaning is slightly in favor of the latter contention, viz., that neither the Court of Wards nor their officers, whose duty it is to obey their lawful orders, are responsible for handing over property to a wrong party in the honest belief that he was entitled thereto, such belief being the outcome of reasonable inquiries held or conducted with due care and caution.

8. Now, as to the actual procedure to be adopted in doubtful cases—one course would be to induce the disputing parties to litigate the question at issue between them and apply for the appointment of a Receiver to take charge of the property which is the subject of the suit pending the litigation. Another would be for the Court of Wards to direct their officers in possession to institute an interpleader suit under Chapter XXXIII. of the Civil Procedure Code, making all the claimants parties thereto for the purpose of obtaining a decision as to whom the

property belongs to. It seems to me that it would be safer to adopt either of the above courses than the one referred to in the Collector's letter, viz., to obtain an indemnity bond.

9. It is true that even if my view as to the immunity of the Court of Wards and their servants be correct, there is nothing to prevent the taking of an indemnity bond. But such a course appears to me to be somewhat likely to create in the minds of the parties, whose claims may be rejected by the Court of Wards, the impression, firstly, that the Court of Wards are not quite sure of the title of the party to whom possession was given; secondly, that the Court of Wards are conscious of their liability to the true owner if he should turn out to be a person other than the party who got possession from the Court. Perhaps it is undesirable to give room for any such notion gaining ground as it may involve the Court of Wards and their officers in vexatious litigation. Again, in such cases, a mere personal undertaking ought never to be accepted, but substantial security in the shape of Government paper or immoveable property other than that in litigation must be taken. So far as I can judge, in the majority of cases, it is unlikely that such security will be forthcoming. Even if such security be offered, there is the further element of difficulty in having to ascertain its real value and sufficiency.

10. Now, as to the amount for which security should be demanded. I would suggest that, as a general rule, it should never be less than a sum twice the value of all moveable property and at least three years' estimated mesne profits of the immoveable property. I am afraid it would be unreasonable to demand security for the value of the immoveable property also, though, in extreme cases, even such property may be lost by failure to pay Government revenue or other like cause. In conclusion, I may add that if it is remembered that the enactment on the subject in force in this country is nearly 90 years old, the obscure and defective state of the law will not appear surprising. But it is strange that the matter has not attracted attention earlier. If it is allowed to continue in this doubtful state much longer, it is not unlikely that it may lead sooner or later to serious practical difficulties and inconvenience. The case of the Utumalai Zemindar, which has been again sent to me for advice, is a good instance in point. The remedy, however, is simple and lies in appropriate legislation. I do not know why the course adopted in Bengal has not yet been followed here. The enactment of a provision similar to section 79 of Act No. IV. of 1870 (Bengal Council) would obviate all difficulties and put the law on a satisfactory footing. That section runs as follows:— "If, on the death of any ward, the succession to his property or any part thereof be in dispute, it shall be competent to the Court, if it think fit, to continue the charge and management of such property or part thereof under the provisions of this Act, until an order for making over the possession and management of such estate shall have been made by a competent court."

READ—also letter from Dewan Bahadur S. SUBRAMONEYA IYER, Acting Government Pleader, to the Secretary to the Board of Revenue (Land Revenue), dated 2nd May 1892:—

ABSTRACT.—Returning the enclosures to Board's Proceedings, No. 2312, Mis., of the 13th ultimo.

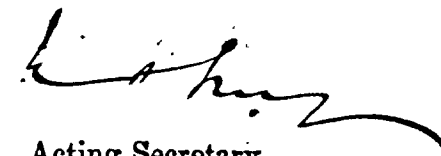
RESOLUTION—dated 11th May 1892, No. 217.

The Government Pleader's opinion read above will be communicated to the Collector of Nilgiris, who will file an interpleader suit under Chapter XXXIII. of the Civil Procedure Code against the several persons who claim the estate. The Collector should also apply, under section 504 of the Code, for his appointment as Receiver pending the determination by the civil court of the question of succession.

2. A copy of these Proceedings, with copy of the Government Pleader's opinion, will be submitted for the information of Government, with reference to the Government Pleader's suggestion in the concluding portion of his opinion regarding the amendment of Regulation V. of 1804. The Board requests to be informed whether Government is prepared to accept suggestions from the Board in the direction of amending the Regulation. If so, the Board will submit the necessary proposals for amending the Regulation both in this and in certain other respects also in which it has been found to be defective.

3. The gist of paras. 3—6 of the Government Pleader's opinion will be inserted in the revised edition of the S.O.

(True Copies and Extract.)


Acting Secretary.

To the Collector of Nilgiris.

Copy to the Secretary to Government, Revenue Department.

Exd. E. Fernandes.

REVENUE DEPARTMENT.

1892.

Board of Revenue

(Land Revenue),

MADRAS.

Current Number 4679

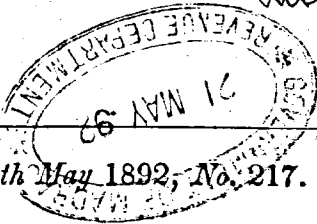
CONFIDENTIAL. No 54.

Recd. 21 May

Printed May, 20th.

Incls Nil

Proceedings, 11th May 1892, No. 217.



Communicating to the Collector of the Nilgiris opinion of the Government Pleader regarding the handing over of the Nelliyalam estate.

D² 1,000-7-9-92.

Very respectfully

REVENUE DEPARTMENT.

Current No.

From

Dated

189

FOR ORDERS.

Please put up any pp. we have regarding the probt part of the question - as Thomson's alleged opinion. We have no information re to so. The Council is at noon of Monday (21st)

S.R. 20/1/5

The opinion is given in para 72 of the collector's letter at page 86 printed in G. O. 697 31-7-93. No report appears to have been called for thereon. The document refers apparently to the land vested secured by the Court of Wards as compared with what is obtained when the estate is under the owner's management. This fact appears to be admitted by Mr. Clerk (vide para 13 of his letter at page 7. G. O. 887 19-12-94)

FOR ORDERS.

REVENUE DEPARTMENT.

Current No. 4679 of 1892.

From

Dated

18

FOR ORDERS.

In 1893, the proprietor of the Neliyalam estate in the Nilgiris district, which was under the management of the Court of Wards, died issueless and the succession to the estate being disputed, the Court on the advice of the Govt. Pleader directed the Collector to publish a notice in the District Gazette to the effect that the estate would be handed over to two cousins of the deceased proprietor unless an injunction of a competent Court of law was produced within a specified time. The notice was accordingly published and the Collector enquired whether it was necessary to take an indemnity bond from the persons who were to take possession of the estate. The Court consulted the Govt. Pleader again whose reply is printed

at pages 2 to 4 of the current.

2. The Govt Pleader (Mr R. S. Sabah manya Aiyar) contends that the Court of Wards is a public body possessing judicial functions, that it is not liable for an error of judgment in matters within its jurisdiction & that it is not responsible for handing over an estate to a wrong party in the honest belief that he is entitled thereto. He would not, therefore, advise the taking of an indemnity bond which would be an admission that the Court of Wards is responsible to the real owner. He accordingly recommends an interpleader suit under Chapter 23 of the Civil Pro. Codes in view to a decision being obtained as to whom the property belongs. The Court of Wards has accepted this recommendation & issued orders to the Collector accordingly. It is doubtful whether the Govt Pleader's view set forth above is

Report by Mr. Douglas

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The Govt Pleader has submitted a draft of a Bill to amend the C. of W. Act of 1876 & to introduce a similar provision into the Madras Regulation & to take this opportunity to amend it in certain other points. Orders are requested.

1/5/92

I would let them know in writing of its amendment in this proposed. When the Bill is introduced it should be amended and discussed & settled it will be time enough to frame a draft.

W. S. P. M.

correct but there can be no question as to the soundness of the course recommended by him

3. But the point on which orders are required is whether the Govt will accept suggestions for the amendment of the Court of Wards Regulation V of 1876. The Govt Pleader points out that, in cases of disputed succession, the Bengal Code (Section 79 of Act IV of 1870) permits the Court of Wards to retain the management of an estate until an order for making it over is passed by a competent court. The Court of Wards apparently wishes to introduce a similar provision into the Madras Regulation & to take this opportunity to amend it in certain other points. Orders are requested.

4. An attempt was made to recast the Regulation in 1878 but was dropped after the bill was introduced into the Legislative Council. Under the

papers marginally noted.

5. The Board proposes to insert in the revised standing order the substance of paras 3-6 of the Lord Pleader's letter but it is doubtful whether ~~this~~^{it} is necessary or advisable to do so. Para 3 merely enumerates the powers given to the Court of Wards by the Regulation & the remaining paras contain the Lord Pleader's individual opinion that the Court is a public body with judicial functions & that it is not liable for errors of judgment. Even assuming that this opinion is sound, there appears to be no object in introducing it into the standing order.

no
26/5 I do not know why the former
Court of Land Rents was not
pursued or not. The Regulation
of 1804 is not of the
highest benefit or advantage.
I do not think it is
advisable to embody the law.
The opinion in the House
of Lords is not
authoritative. Ch.
27/5

not advisable
24 f.
Signed 1/6/92
W W
y f m m . 6
10

~~Confidential~~

*
p. $\frac{217}{11-5-92}$

Read C. No. 4679 of 1892

G.O. Ind. No: 2767 dated 10 June 92

The Board is requested to submit suggestions for the amendment of Regulation V of 1804 as proposed in para 2 of its Pro.

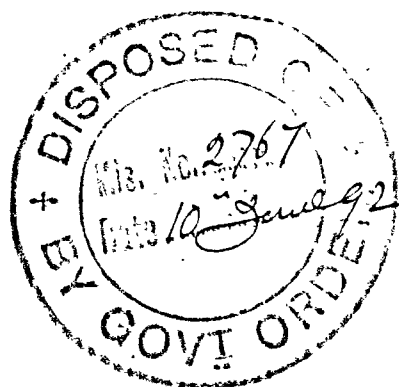
2. The Govt does not consider ~~that~~ it advisable to embody the Govt Pleader's opinion in the Bond's standing order as suggested in para 3.

Ch
9/10

To The Commissioners of Land Revenue. ²⁰ 8/16

C. No. 4679 of 1892

Re: the amendment of the Court
of Wards Regulation V of 1884.



First copy sent to Press.

Returned for Signature.

Despatched.

READ AGAIN G.O., N.
189

DATED

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LETTER OF GOVERNMENT.

STATEMENT WITH DITTO

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IN ORIGINAL.

N.B.—

A = Print in full.
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Q = Print heading only.

Government {1892} of Madras.

REVENUE.

CONFIDENTIAL.

Recd.

Regd.

} 1892.

Enclosures

Spare copies

G.O., Mis. No. 2767, 10th June 1892.

JUNE.

Regulation V of 1804.

Requesting the Board of Revenue to submit suggestions for the amendment of —.

CONFIDENTIAL.

GOVERNMENT OF MADRAS.
REVENUE DEPARTMENT.

READ—Proceedings of the Board of Revenue (Land Revenue), dated 11th May 1892, No. 217.

ORDER—Mis. No. 2767, Revenue, dated 10th June 1892.

The Board is requested to submit suggestions for the amendment of Regulation V of 1804 as proposed in paragraph 2 of its Proceedings read above.

2. The Government does not consider it advisable to embody the Government Pleader's opinion in the Board's S.O. as suggested in paragraph 3.

(True Extract.)

(Signed) C. A. GALTON,
Secretary to Government.

To the Board of Revenue (Land Revenue).

Encl. J. Henricus.

60 Copies.

PROCEEDINGS OF THE BOARD OF REVENUE
(LAND REVENUE).

FULL BOARD.

READ—again Proceedings of the Board of Revenue (Land Revenue), Mis. No. 786, dated 4th February 1892.

ABSTRACT.—Communicating, with remarks, to the Collector of the Nilgiris, Government Order approving and sanctioning Board's instructions to publish a notice in the District Gazette that the property belonging to the Nelliyalam estate will be handed over to Puttiah and Belliah unless restrained by an injunction of a competent court of law within a prescribed time.

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NILGIRI COLLECTOR'S OFFICE,
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1st March 1892.

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(A true Copy and Extract.)

(Signed) H. A. SIM,
Acting Secretary.

To the Government Pleader, with Collector's letter and its enclosures
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READ—also letter from Diwan Bahadur S. SUERAMONEYA IYER, Acting Government Pleader, to the Secretary to the Board of Revenue (Land Revenue), dated 2nd May 1892.

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(True Copies and Extract.)

(Signed) H. A. SIM,
Acting Secretary.

To the Collector of Nilgiris.

Copy to the Secretary to Government, Revenue Department.

REVENUE DEPARTMENT.

1892.

Board of Revenue

(Land Revenue)

MADRAS.

Printed August 5th, 1901.

Proceedings No. 217, 11th May 1892.

Communicating to the Collector of the Nilgiris
opinion of the Government Pleader regarding the
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Government (1892) of Madras.

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Regulation V of 1804.

Requesting the Board of Revenue to submit suggestions for the amendment of

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REVENUE DEPARTMENT.

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(True Extract.)

(Signed) C. A. GALTON,
Secretary to Government.

To the Board of Revenue (Land Revenue).

Ed. J. Henricus.

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PROCEEDINGS OF THE BOARD OF REVENUE
(LAND REVENUE).

FULL BOARD.

READ—again Proceedings of the Board of Revenue (Land Revenue), Mis. No. 786, dated 4th February 1892.

ABSTRACT.—Communicating, with remarks, to the Collector of the Nilgiris, Government Order approving and sanctioning Board's instructions to publish a notice in the District Gazette that the property belonging to the Nelliylam estate will be handed over to Puttiah and Belliah unless restrained by an injunction of a competent court of law within a prescribed time.

READ—again the following Proceedings of the Board of Revenue (Land Revenue), Mis. No. 2312, dated 13th April 1892:—

Read—the following letter from J. D. REES, Esq., C.I.E., Collector of Nilgiris, to the Secretary to the Court of Wards, dated Ootacamund, 9th April 1892, No. 123 B:—

With reference to the Proceedings of the Court of Wards, Mis. No. 786, dated 4th February 1892, I have the honor to enclose copy of the notice published in the Gazette of this District for the last month. Copies of this notice were also forwarded to the Collector of Malabar and to the publisher of the Mysore Gazette for publication in their Gazettes.

2. I beg to request the Court's orders whether any indemnity bond or other document should be taken from Belliah and Puttiah on handing over the estate, and what other formalities, if any, should be observed. So far as I am aware, no records on this subject are available here.

3. If an indemnity bond or other document is to be taken or made, I beg the Court will be pleased to have one drafted by the Government Pleader and sent to me.

ENCLOSURE No. 1.

Notice is hereby given that the Collector of Nilgiris and Agent to the Court of Wards will hand over the Nelliylam estate together with all the effects of the deceased Linga Raja Arasukal to Puttiah and Belliah, sons of Nanjamma, stepsister of the said deceased Linga Raja Arasukal, unless restrained by injunction of a competent court of law within three months from this date.

NILGIRI COLLECTOR'S OFFICE,
OOTACAMUND,
1st March 1892.

(Signed) J. D. REES,
Collector of Nilgiris and Agent to the Court of Wards.

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REVENUE DEPARTMENT.

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2. I beg to request the Court's orders whether any indemnity bond or other document should be taken from Belliah and Puttiah on handing over the estate, and what other formalities, if any, should be observed. So far as I am aware, no records on this subject are available here.

3. If an indemnity bond or other document is to be taken or made, I beg the Court will be pleased to have one drafted by the Government Pleader and sent to me.

ENCLOSURE No. 1.

Notice is hereby given that the Collector of Nilgiris and Agent to the Court of Wards will hand over the Nelliyalam estate together with all the effects of the deceased Linga Raja Arasukal to Puttiah and Belliah, sons of Nanjamma, stepsister of the said deceased Linga Raja Arasukal, unless restrained by injunction of a competent court of law within three months from this date.

NILGIRI COLLECTOR'S OFFICE,
OOTACAMUND,
1st March 1892.

(Signed) J. D. REES,
Collector of Nilgiris and Agent to the Court of Wards.

Resolution—Mis. No. 2312, dated 13th April 1892.

The Collector's letter read above will be forwarded to the Government Pleader for favor of advice.

2. With reference to Mr. Powell's letter of the 7th January last, No. 15, the Collector of Nilgiris was directed to publish a notice to the effect that the property will be handed over to Puttiah and Belliah unless restrained by the injunction of a competent court of law within three months from the date of the notice. The Collector inquires whether any indemnity bond should be taken from Puttiah and Belliah before handing over the property to them, and whether any other and what formalities should be observed. For guidance in this and similar cases in future the Board requests the favor of the Government Pleader's opinion on the questions raised by the Collector. If an indemnity bond is considered necessary, it is requested that a form of the bond may be furnished.

(A true Copy and Extract.)

(Signed) H. A. SIM,
Acting Secretary.

To the Government Pleader, with Collector's letter and its enclosures
and Board's Proceedings, Mis. No. 306, dated 15th January 1892,
and Mis. No. 786, dated 4th February 1892, and Mis. No. 1336, dated
24th February 1892, and their enclosure, all in original, to be returned.
.. Collector of Nilgiris.

READ—also the following letter from Diwan Bahadur S. SUBRAMONEYA IYER,
Acting Government Pleader, Madras, to the Secretary to the Board of
Revenue (Land Revenue), dated 2nd May 1892, No. A.I. :—

With reference to the Board's Proceedings, Mis. No. 2312, dated the 13th day
of April 1892, I have the honour to submit the following :—

OPINION.

1. The question, referred to me for opinion, is whether any indemnity bond should be taken before making over the property of Linga Raja, the late ward of the Court, to Puttiah and Belliah (whose title to succeed him is questioned by the stepmother), and whether any and what formalities should be observed in this and other similar cases.

2. To help us in arriving at a proper conclusion as to the best course to be adopted in such cases, it is necessary to ascertain the true position of the Court of Wards, the Collector, manager, and others acting under their authority.

3. Regulation 5 of 1804 enacts provisions for the care of the person and property of incapacitated proprietors "under the sanction of public authority and of legal provisions" (preamble). The public authority, so constituted, is the Court of Wards. The Court is authorised, with the sanction of the Governor in Council, to assume superintendence over the person and property of certain descriptions of incapacitated proprietors. The Court is empowered, subject to the final decision of the Governor in Council, to select and appoint proper managers for the custody and management of the property and fit guardians for the care of the person of such proprietors and to take due means for the proper execution of the trusts reposed in such managers and guardians (sections 2, 8, and 19). In the case of female proprietors, the Court has to determine whether they are fit to be put into possession and management of their estates (section 3). The Court has power to

grant permission to disqualify landholders to adopt (section 25). It rests with the Court to sanction the disposal of the property of their wards (section 15) as well as the payment of their debts (section 17). The Court may entertain and inquire into complaints against Collectors, guardians, and managers and pass judgment, subject to appeal to the Court of Sadr Adawlut, and enforce penalties which have become payable according to the engagements executed under the Regulation.

4. The Court of Wards is, thus, as their very designation indicates, a public official body possessing functions which are either judicial or such as require the exercise of discretion.

5. Many of these powers are substantially what the Court of Chancery possessed before, and what the High Court of Justice possesses now, in England. They are similar to those that have been recently conferred by the Guardian and Wards' Act on the courts of this country in respect of persons not subject to the jurisdiction of the Court of Wards. The mere fact that, having regard to the peculiar circumstances of this country, the legislature considered it expedient to invest the Board of Revenue with such functions cannot take away their judicial character.

6. It is well established that an authority exercising such powers is not liable for errors of judgment in matters within their jurisdiction. The law on the point and the reason of it is thus stated by Lord Brougham in *Ferguson versus The Earl of Kinnoull* (9 Clark and Finelly at p. 289): "The Courts of Justice, i.e., the Superior Courts, Courts of General Jurisdiction, are not answerable either as bodies or by their individual members for acts done within the limits of their jurisdiction. Even inferior courts, provided the law has clothed them with judicial functions, are not answerable for errors of judgment, and where they may not act as judges, but only have a discretion confided to them, an erroneous exercise of their discretion, however plain the miscarriage may be and however injurious its consequences, they shall not answer for. This follows from the very nature of the thing. It is implied in the nature of judicial authority and in the nature of discretion where there is no such judicial authority." So far the law is clear.

7. The next matter for consideration is whether it is within the province of the Court of Wards to determine who is the person that is entitled to take a deceased ward's property as his heir and successor. The Regulation is entirely silent on the point. On the one hand, it may be said that, on the death of the ward, the Court becomes *functus officio*, and their officers having possession of the property are bound at their peril to put the true owner in possession, and that the obligation of such officers is the same as that of any private individual who finds himself in possession of another man's property (*Hort versus Bott*, L.R. 9 exch. 86), and that they are answerable to such owner if they have parted with possession of the property in favor of one who had no title even though they did so through a *bona fide* mistake. On the other hand, it may be urged that it is but reasonable to hold that the Court has, by implication, the power to decide who the person entitled as heir and successor is, not finally, but only incidentally in the discharge of their duty under the statute. It is very difficult to decide which of these contentions is sound. I shall not at all be surprised, when the point comes to be discussed in the civil courts, if the former view prevails, though my own leaning is slightly in favor of the latter contention, viz., that neither the Court of Wards nor their officers, whose duty it is to obey their lawful orders, are responsible for handing over property to a wrong party in the honest belief that he was entitled thereto, such belief being the outcome of reasonable inquiries held or conducted with due care and caution.

8. Now, as to the actual procedure to be adopted in doubtful cases—one course would be to induce the disputing parties to litigate the question at issue between them and apply for the appointment of a Receiver to take charge of the property which is the subject of the suit pending the litigation. Another would be for the Court of Wards to direct their officers in possession to institute an interpleader suit under Chapter XXXIII of the Civil Procedure Code, making all the claimants parties

4 BOARD OF REVENUE (LAND REVENUE), No. 217, 11TH MAY 1892.

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9. It is true that even if my view as to the immunity of the Court of Wards and their servants be correct, there is nothing to prevent the taking of an indemnity bond. But such a course appears to me to be somewhat likely to create in the minds of the parties, whose claims may be rejected by the Court of Wards, the impression, firstly, that the Court of Wards are not quite sure of the title of the party to whom possession was given; secondly, that the Court of Wards are conscious of their liability to the true owner if he should turn out to be a person other than the party who got possession from the Court. Perhaps it is undesirable to give room for any such notion gaining ground as it may involve the Court of Wards and their officers in vexatious litigation. Again, in such cases, a mere personal undertaking ought never to be accepted, but substantial security in the shape of Government paper or immoveable property other than that in litigation must be taken. So far as I can judge, in the majority of cases, it is unlikely that such security will be forthcoming. Even if such security be offered, there is the further element of difficulty in having to ascertain its real value and sufficiency.

10. Now, as to the amount for which security should be demanded, I would suggest that, as a general rule, it should never be less than a sum twice the value of all moveable property and at least three years' estimated mesne profits of the immoveable property. I am afraid it would be unreasonable to demand security for the value of the immoveable property also, though, in extreme cases, even such property may be lost by failure to pay Government revenue or other like cause. In conclusion, I may add that if it is remembered that the enactment on the subject in force in this country is nearly 90 years old, the obscure and defective state of the law will not appear surprising. But it is strange that the matter has not attracted attention earlier. If it is allowed to continue in this doubtful state much longer, it is not unlikely that it may lead sooner or later to serious practical difficulties and inconvenience. The case of the Utumalai Zemindar, which has been again sent to me for advice, is a good instance in point. The remedy, however, is simple and lies in appropriate legislation. I do not know why the course adopted in Bengal has not yet been followed here. The enactment of a provision similar to section 79 of Act No. IV of 1870 (Bengal Council) would obviate all difficulties and put the law on a satisfactory footing. That section runs as follows:—"If, on the death of any ward, the succession to his property or any part thereof be in dispute, it shall be competent to the Court, if it think fit, to continue the charge and management of such property or part thereof under the provisions of this Act, until an order for making over the possession and management of such estate shall have been made by a competent court."

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3. The gist of paras. 3—6 of the Government Pleader's opinion will be inserted in the revised edition of the S.O.

(True Copies and Extract.)

(Signed) H. A. SIM,
Acting Secretary.

To the Collector of Nilgiris.

Copy to the Secretary to Government, Revenue Department.

Exd. W. D'Moss.

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1892.

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(Land Revenue)

MADRAS.

Printed August 5th, 1901.

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(True Extract.)

(Signed) C. A. GALTON,
Secretary to Government.

To the Board of Revenue (Land Revenue).

Exd. J. Henricus.

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