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MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. Nos 958-59 Press / Mis. Original

Dated 7th November 1893.

Not to be folded or roughly handled

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

READ—again G.O., dated 16th August 1893, No. 732, Revenue.

ABSTRACT.—Referring the Encumbered Estates Bill to the Board of Revenue for remarks.

READ—also the following Proceedings of the Board of Revenue (Land Revenue), dated 4th September 1893, No. 509 :—

Read—Government Order, dated 16th August 1893, No. 732, Revenue.

Resolution—dated 4th September 1893, No. 509.

With the above order the Government forwards to the Board of Revenue, for report, a Bill for taking encumbered estates in this Presidency under Government management. The Bill is drafted on the lines of the Sindh Encumbered Estates Act—India XX of 1881 as amended by XI of 1884—and the main points on which the present Bill differs from its model are noticed in the covering Government Order.

2. The Bill places encumbered estates taken under Government management under the control of the Board of Revenue, not of the Court of Wards, and the powers which it grants in respect of such estates are far larger than the Court of Wards possesses in regard to the estates of minors and females under its management.

3. According to the provisions of this Bill, when Government orders an estate to be taken under management—

(1) All civil proceedings then pending in respect of debts due by the estate are suspended, and after the final "liquidation scheme" is sanctioned, they are for ever barred (sections 8 and 20).

(2) No fresh civil proceedings can be taken against the estate while it remains under management (section 8).

(3) All claims not notified to the Collector within a certain time are held to be discharged (section 14).

(4) In making out the "liquidation scheme", the Collector is empowered and directed, under rules to be framed by the Local Government and subject to appeal to and final approval of the Board * of Revenue, to investigate all claims against the estate, to determine what is "justly" due to each creditor and where, as will be the case in most instances, the debts cannot be paid off at once, to determine the order in which they shall be paid, and to fix the rate of interest, if any, to be paid until each claim is discharged (sections 15 to 19 and 31). And a "liquidation scheme" once sanctioned, nothing can be recovered in respect to the claims therein dealt with but what is awarded in the scheme (section 20).

* Sections 18 and 29.

4. Assuming that the words "determine the amount . . . *justly* due to the several claimants" in section 15 of the Bill mean that the Collector is to cut down debts for which due consideration has not been received and which have been swollen by exorbitant rates of interest, it follows that the Collector acting under the guidance of rules passed by the executive Government, and under the supervision of another executive authority—the Board—is invested with the powers of a Court of Equity or Bankruptcy to a most enormous extent.

5. The executive, that is to say, first fixes what is "justly due," then arranges the claims in order of merit (apparently again on considerations of equity) and, lastly, allows interest or not as it pleases upon the deferred claims. No person affected by these decisions has any appeal except to the executive itself as represented by the Board whose decision is final (section 29), and such a person has to take what the "liquidation scheme" gives him or nothing at all.

6. The Board submits that this colossal transfer of judicial powers to the Revenue authorities, and the wholesale exclusion of the jurisdiction of the Civil Courts, would be an arbitrary and reactionary measure which the circumstances of this Presidency do not in the least call for. Moreover, the making out of a "liquidation scheme" will throw an immense amount of work upon Collectors, who have but too little time to spare as it is, and will burden the Board and Government * with a mass of appeals. Every creditor whose claim has been cut down or to whom payment is deferred will, of course, come up against the Collector's decision. And even the consideration of a "liquidation scheme" as it stands will give no inconsiderable amount of extra work to the Board.

* So far as an appeal will lie to Government against the general liquidation scheme, outside of the matters dealt with in sections 14, 15 and 16 in regard to which the Board's decision is final (section 29).

7. To continue the analysis of the Bill:—

(5) Any person in occupation of property by mortgage in an encumbered estate may, when the liquidation scheme comes into operation, be summarily ejected (section 21).

(6) The Collector may, after the Board has sanctioned an inquiry, summarily cancel, or order the payment of additional consideration in respect thereof, any lease executed within three years of the assumption of management which appears to have been granted on insufficient consideration (section 22), and in respect of acts done under either of these sections the Civil Courts are likewise forbidden to interfere unless there has been manifest bad faith (section 35), while in respect to section 21, the extinction of liabilities provided by the second clause of section 20 would likewise apply. It has to be noted also that against acts done under section 22, as in the case of proceedings under sections 14—16, there is no appeal even to the executive Government (section 29).

8. Lastly (7)—section 8 (3) (*a*) of the Bill prevents the proprietor of an estate under management and his heir from entering into any contract involving either of them in pecuniary liability. In this connection the Board begs to point out that when India Act IV of 1892 was under discussion an amendment in this sense, but less sweeping in its character, was proposed by the Honorable Mr. Chentsal Rao and negatived, and it would invite the particular attention of Government to the speech of the Honorable Sir Philip Hutchins in dealing with that amendment—*vide* page 51, Part VI of the *Gazette of India* of 2nd April 1892.

9. The Bill before the Board has followed the provisions of the Sindh and Chota Nagpore Acts, although the circumstances of this Presidency are entirely different. In Sindh, which like the rest of the Bombay Presidency possesses no Court of Wards, there was a much indebted and historic aristocracy, while the Lieutenant-Governor of Bengal, when introducing the Bill which afterwards passed into law as Act VI of 1876 (India), took care to point out that Chota Nagpore was a hill country with large landowners "virtually in the position of Native chiefs"—*vide* page 54 of the supplement to the *Gazette of India* of 29th January 1876. Both these Acts were therefore dictated, and doubtless justified, by political considerations. There are

no such considerations to be taken into account in Madras, as is shown by the refusal of Government, in Government Order, dated 10th July 1893, No. 606, to legislate in the direction of saving old estates from partition or alienation, and from the heavy litigation expenses consequent on the present uncertain position of the law in regard to these matters; and by its remarks on zemindars as a class in paragraphs 7 and 9 of the same order.

10. The law is very careful in preserving the rights of every owner to deal with his own property, and no part of this right should be taken away without strong reason; but the Bill now under discussion proposes legislation which would have the effect of entirely ousting the Civil Courts in regard to numerous important matters hitherto within their sole and unquestioned jurisdiction. It is certainly desirable that the encumbered estates of prominent individuals should be saved from ruin, but if (apart from such assistance as might be afforded by a law of entail) they cannot be saved by careful management, they should not be saved at all. Nothing short of supreme necessity justifies the suspension of the ordinary law of the land and the silencing of the Courts in the manner now proposed, and the Board submits that in this Presidency no such necessity has arisen or is to be anticipated. The Agency tracts, it must be remembered, are already secured special treatment by the Scheduled Districts Act and are outside the operation of the Civil Procedure Code.

11. The Board further begs to point out that, whereas in the Sindh Act (section 3, Act XX of 1881), interference is limited to the case of zemindars paying to Government not less than Rs. 300 a year the proposed Madras Bill would extend to every petty shrotriemdar and inamdar in the Presidency.

12. What the Board had in view when in paragraph 27 of the Board's Proceedings dealt with in Government Order, dated 10th July 1893, No. 606, it proposed an Encumbered Estates Act was a very different piece of legislation, viz., India Act IV of 1892, which dealt with encumbered estates in Bengal proper. That Act merely allows the Local Government, on the application of a land-holder, to put his estate under the Court of Wards (section 3), and thereupon it becomes subject, like the estates of minors and females, to the management of the Court under the provisions of Act IX of 1879 (Bengal) which runs in the main on the same lines as Madras Regulation V of 1804, though it is much better drafted. A similar measure is, the Board considers, all that is required for this Presidency. It is not the function of the executive Government to interfere with or adjudicate upon the debts already contracted by land-holders not *primâ facie* disqualified by age, sex or infirmity—that is for the judicial tribunals to determine. All that the executive can equitably do is, on the request of such a land-holder, to take his estate under management (or preferably put it under the body established by law to protect the interests of disqualified land-owners—the Court of Wards) and give him the benefit of efficient administration and of the protection accorded to wards, viz., that while his estate is under management, it shall not be sold on account of Government demand though such demand shall have precedence of private debts (sections 14 and 17 of the Court of Wards Regulation), and that during this period the managing authority shall represent his interests. Further, as provided by section 17 of the Court of Wards Regulation, the consent of the managing authority should be required for the repayment of any private debts, leaving doubtful ones to be fought out in the Civil Courts.

13. The Madras Court of Wards Regulation is undoubtedly capable of improvement, and the Board hopes at some not very distant date to be able to submit proposals for its amendment, but it is perfectly workable, and if legislation on the lines of India Act IV of 1892 were adopted, the additional estates which might thus be put under the Court's charge would be efficiently managed.

14. It may be noted that this plan of simply putting the owners of encumbered estates on the same footing as minors or incapacitated wards was proposed for this Presidency so long ago as 1875—*vide* section 4 (*f*) of the draft Court of Wards Bill communicated with Government Order, dated 21st July 1875, No. 39, Legislative, and paragraph 3 of the Select Committee's covering report read in the same order.

15. Apart from the main objections to its principles which have been urged above, the Board has to submit the following remarks on individual sections of the Bill.

Section 3 (1).—There should certainly be some limitation to the first clause so as to make it clear that petty properties will lie outside the scope of the Bill. The public can have no interest in the maintenance of small estates. The Board would limit the application of the Bill to estates with an annual rent value of Rs. 10,000, determined, as was proposed in section 6 of the draft Court of Wards Bill of 1875 above referred to, in the manner prescribed for the purpose of levying land-cess under the Local Boards Act (section 64 of Madras Act V of 1884).

(2) The application should be made through the Collector so as to give him opportunity for expressing his views thereon.

(3) When an estate is under the Court of Wards, application under this section should not be made except by the Court.

Section 8 (3) (*z*).—The Board considers this provision too sweeping and absolute—see remarks in paragraph 8 above.

Section 11 (3).—The Board does not think it necessary to legislate for persons who do not hold direct under Government—see remarks on section 3 above.

Section 15—"Determined the amount . . . justly due to the several claimants."

It should be made clear whether this does or does not involve the extensive equity jurisdiction supposed by the Board in its remarks on the general provisions of the Bill. And the principles which are to guide the Collector in the important and delicate task of adjudication under this section and *section* 16 should be laid down by law and not left to mere administrative enactment under section 31.

Section 20.—Considering the finality of the "liquidation scheme" in regard to all claims against the estate, it ought, the Board thinks, to receive the sanction of Government, or an appeal to Government by any person aggrieved by it should be specially provided. Subsequent revision of the liquidation scheme to suit altered circumstances should also be provided for. *Section* 18 appears to cover only revisions before final sanction.

Similarly, an appeal to the Board should be allowed against acts done under *section* 21 and an appeal to Government against proceedings under *section* 22.

Section 27.—When the next heir in the circumstances contemplated by this section is a minor, the jurisdiction of the Court of Wards should be barred so long as the management continues.

Section 29.—As above remarked, considering the final character of the actions of the executive under this Bill, there should at least be an appeal to the highest executive authority—the Government—in matters of such moment as decisions under sections 14, 15, 16, 21 and 22. All the Board's orders in regard to the general administration of the estate including the allowances fixed under section 11 (4) should be final, and an intermediate appeal should be provided from the manager to the Collector.

16. The Board has, through the courtesy of the Honorable Mr. Chentsal Row, C.I.E., obtained a copy of a Bill which he proposed to introduce into the Legislative Council of India and which, with the connected papers including the opinions of a number of representative native gentlemen, is herewith submitted to Government.

That Bill, which goes on the lines advocated by the Board, viz., to allow important embarrassed estates to be placed by Government, at the request of the owner, under the management of the Court of Wards, is, the Board ventures to think, a much more modest, workable and equitable measure than the proposed Government enactment, and if the Government so wishes the Board will be happy to submit remarks and suggestions thereon. It need only say here that the scope of section 9 (3) would have to be restricted for the reasons set forth in paragraph 8 above.

17. The Board's Second Member takes exception to the provision in section 3 of the Government Bill which allows an heir to invoke the interference of Government. He would restrict the power of application for management to the owner of the estate

for the time being. The other Members consider that if the main policy and principles of the Government Bill be admitted there is no reason why the heir of an improvident land-holder should not be allowed to invoke its aid.

(A true Copy and Extract.)

(Signed) W. S. MEYER,
Acting Secretary.

To the Secretary to Government, Revenue Department,
with one enclosure.

READ—also the following paper:—

MINUTE BY THE HON. J. H. GARSTIN, C.S.I.

The Encumbered Estates Bill.

When the Honorable Mr. Chentsal Rao proposed to introduce a Bill into the Viceregal Legislative Council for the purpose of dealing with encumbered estates, his offer was declined, not because his Bill was not as drastic as the present one, but merely because the Members of the Madras Government were unanimously of opinion that it was better that an Encumbered Estates Bill for Madras should be introduced into the Local Council where it would be more fully discussed than in Calcutta. Now that the present Bill has been drafted, however, my Honorable Colleagues consider that it is necessary (1) to bar the jurisdiction of the Civil Courts throughout British India and (2) to affect the operation of the Code of Civil Procedure and the Limitation Act without, as well as within, the Presidency, and that, therefore, the proposed legislation is within the competence of the Council of the Governor-General alone.

If the view taken by my Honorable Colleagues is held by the Government of India to be correct, that Government will, no doubt, take measures to introduce a Bill into the Viceregal Council, but I do not think such a step is necessary, and if it is not necessary, I consider it would be decidedly preferable to have the Bill passed in the Local Council. Indeed, it seems to me that, with the enlarged Local Councils, all local legislation should be dealt with locally in them after the previous assent of the Governor-General in Council has been obtained under section 5 of the Councils Act of 1892, whenever necessary.

My reasons for thinking that it is not necessary to have the Bill passed in Calcutta are—

(1) that it is not necessary specifically to bar the jurisdiction of all Civil Courts throughout India;

(2) that the operation of the Code of Civil Procedure and of the Limitation Act need not be directly affected outside the Presidency, and that, so far as it may be necessary to affect them indirectly, this can be done by an Act of the Local Legislature with the previous consent of the Governor-General in Council.

I consider that, as the Civil Courts of the Madras Presidency alone have jurisdiction therein, if any Court in any other part of India is moved to issue any process against the person or property of any land-owner whose estate is under management

under the proposed Bill, such Court will be unable to execute such process if the jurisdiction of all the Madras Civil Courts is barred, because no Court outside the Presidency can execute any process inside the Presidency except through the Madras Courts and that this barring can be effected if the Bill is passed into law by the local Legislative Council. Moreover, under section 8 of the Bill, once an order of management has issued, the estate-owner and his heir become, to all intents and purposes, civilly dead and incapable of entering into any contract involving him or them in pecuniary liability, so that there is no risk of prospective liabilities being incurred by either of them anywhere while the estate is under management, while, in respect of previously existing liabilities, the creditors outside the Presidency would be on exactly the same footing as those within it as regards the liquidation of their claims.

Next, the affecting of the operations of the Civil Procedure Code and Limitation Act both within and without the Province seems to me to be very much the same thing as barring the jurisdiction of the Courts all over India, and I hold that, under section 5 of the Indian Councils Act of 1892, the Local Legislature of Madras has the power to repeal or amend, so far as the Province of Madras is concerned, either enactment, if the Governor-General in Council gives his previous consent to such a course, and if this is so, then it is, I think, clear that the said Legislature may, with the previous sanction of the Governor-General in Council, modify or suspend the action of either enactment, or of both of them, temporarily, in respect of any or all estates brought under management by virtue of the present Bill.

20th November 1893.

(Signed) J. H. GARSTIN.

ORDER—dated 7th November 1893, No. 958, Revenue.

Miscellaneous.

With its Proceedings read above, the Board of Revenue submits its remarks on the Encumbered Estates Bill which was referred for its opinion in G.O., dated 16th August 1893, No. 732.

2. The Board objects to the principle of the Bill, which, as it points out, involves restriction of the powers of the Courts and the transfer to the executive authorities of functions of a judicial character. Its own view is that no case for legislation of this character exists in this Presidency; that estates which cannot be saved by careful management should not be saved at all; and that, accordingly, it would suffice to legislate on the lines of India Act IV of 1892, with a view to empower the Court of Wards to take encumbered estates under management under the conditions applicable to estates under wardship. But the Government considers that careful management alone cannot save estates which are at all heavily encumbered: that the Board's scheme of legislation cannot help proprietors of such estates, inasmuch as it involves nothing in the shape of liquidation, and it will not prevent creditors from pressing their claims through the Courts and getting the estates sold in satisfaction of decrees; and that the only effectual way of helping an encumbered proprietor and saving his estate from annihilation, will be to provide for a composition of some sort with his creditors and marshalling of their claims and for liquidation by dividend. A law of this character will be applied only in very rare cases—in cases in which there exist special reasons for putting the Act in force; and as cases of this nature may arise in this Presidency, His Excellency the Governor in Council deems it expedient to pass a law which will adequately meet the requirements of such cases. He resolves accordingly to forward the Bill under consideration to the Government of India with the request that steps may be taken to pass it into law in the Imperial Legislative Council.

3. As it is intended to apply the proposed legislation to large estates only, it will be provided in section 3 of the Bill that it shall be applicable only to the estates of

Zemindars and Jagirdars with an ann
The Bill will be amended also in certa
the suggestions made by the Board.

4. Ordered that the following lett

(Here enter No. 95

(Tr

of Rs. 50,000 and upwards.
with reference to some of

the Government of India :—

mber 1893.)

d) E. GIBSON,
Secretary to Government.

To the Board of Revenue (Land Reven
Copy to the Legislative Departme

Exd. A. Grubert.

60 Copies.

Original

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Govt. of {1893} Madras

REVENUE.

G.O., 7th November 1893, No. 958.

NOVEMBER.

Encumbered Estates Bill.

Resolving to forward the — to the Government of India with the request that steps may be taken to pass it into law in the Imperial Legislative Council.

REVENUE DEPARTMENT.

From

E. GIBSON, Esq., C.S.,
Ag. Secretary to the Government of Fort St. George,

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,
HOME DEPARTMENT,

Dated Fort St. George, 7th November 1893.

SIR,

I am directed by His Excellency the Governor in Council to forward herewith the draft of a Bill for taking encumbered estates in this Presidency under Government management and to request that steps may be taken to pass it in the Supreme Legislative Council at as early a date as practicable. The circumstances under which the Bill came to be prepared will appear from the marginally-noted Proceedings of this Government, of which copies are enclosed, and I am to invite attention to paragraphs 2 and 3 of G.O., dated 7th November 1893, No. 958, from which it will be seen that it is the intention of this Government to apply the proposed legislation in respect only of large estates and in cases in which special reasons may exist for putting the law in force.

Miscellaneous.

G.O., dated 10th July 1893, No. 606.
" " 16th Aug. " " 732.
" " 7th Nov. " " 958.

2. It will be seen from the Statement of Objects and Reasons annexed to the Bill that it is modelled generally on the Sindh Encumbered Estates Act, and that as it proposes to bar the jurisdiction of Civil Courts throughout British India and to affect the operation of the Code of Civil Procedure and the Limitation Act, without, as well as within the Presidency, His Excellency the Governor in Council considers that the proposed legislation is within the competence of the Council of the Governor-General alone.

3. I am, however, to forward a copy of a minute by the Honorable Mr. Garstin in which he contends that the object aimed at in the proposed legislation can be secured without specifically barring the jurisdiction of all Civil Courts throughout India and without directly affecting the operation of the Code of Civil Procedure and of the Limitation Act outside the Presidency, and that, even if the jurisdiction of the Courts outside the Presidency has to be barred in the manner provided in the Bill, it is competent for the Local Council to pass the proposed measure after the previous assent of the Governor-General in Council has been obtained under section 5 of the Indian Councils Act of 1892.

I have the honour to be,
Sir,
Your most obedient servant,

(Signed) E. GIBSON,
Ag. Secretary to Government.

Exd. A. Grubert.

40 Copies.

1893.

HOME DEPARTMENT.

From the Government of
Fort St. George.

Issued

Recd. *Encl.*

Letter, dated 7th November 1893, No. 959.

NOVEMBER.

FORWARDING the draft of a Bill for taking encumbered estates in the Madras Presidency under Government management and requesting that steps may be taken to pass it in the Supreme Legislative Council at an early date.

No. OF 1893.

A

BILL

TO

WHEREAS it is expedient to provide for the relief of proprietors of encumbered estates in the Presidency of Madras; It is hereby enacted as follows:— Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Madras Encumbered Estates Act, 1894." Short title.

2. "Collector" means the Collector of a district and includes an Agent to the Governor. Definition.

CHAPTER II.

OF THE APPLICATION AND PROCEEDINGS THEREUPON.

3. Any Zamindar or Jagirdar, holding land situate within the Presidency of Madras and yielding an annual gross income of fifty thousand rupees or more, or any person who would be sole heir or one of the heirs of such proprietor if he then died intestate Act XX of 1881, section 4. Application for the benefit of this Act.

may apply, in writing, to the Board of Revenue stating that such proprietor is subject to debts or liabilities other than debts due or liabilities incurred to Government or that his immoveable property is charged with debts or liabilities other than as aforesaid; and requesting that the provisions of this Act be applied to his case.

When any person entitled to make an application under this section is subject to any legal incapacity, such application

CHAPTER IV.

Appointment and Powers of the Manager.

[*New.*]

9. On the nomination of the Collector, the Board of Revenue shall appoint a person to be manager of the property of the debtor. Such manager shall, in the conduct of his duties, be subject to the control of the Collector and of the Board of Revenue, and may be suspended or removed by the said Board, which may in such case appoint a person to be manager in his place on a fresh nomination by the Collector. Every person appointed to be manager shall give security for the proper performance of his duty.

Appointment of Manager.

Act XX of 1881, section 10.

[*New.*]

10. Subject to the provisions of this Act, the manager shall, during the continuance of the management of the property, have all powers which the owner thereof might as such have legally exercised and shall receive and recover all rents and profits due in respect of the property under management. Provided that he shall obtain the sanction of the Board of Revenue for the sale of any of the moveable property taken under management, and shall not before the liquidation-scheme hereinafter mentioned has been sanctioned demise the immoveable property under management or any part thereof for any term exceeding two years to take effect in possession.

Powers of Manager.

Act XX of 1881, section 11.

11. From the sums received or recovered under section ten, the manager shall pay —

Manager to pay therefrom—

First, the costs of the management, including sums levied or charged under Act X of 1892 and the costs of necessary repairs;

costs of management and repairs,

Secondly, the Government revenue and all debts and liabilities for the time being due or incurred to Government in respect of the property under management;

Government revenue, &c.,

Thirdly, the rent (if any) due to a superior holder in respect of the said property or any part of it;

rent due to superior holder,

Fourthly, such periodical allowances as the Board of Revenue may from time to time fix for the maintenance of the debtor and his family;

allowance for maintenance of debtor,

Fifthly, the cost of such improvements of the said property as he thinks necessary and as are approved by the said Board.

cost of improvements, &c.

The residue shall be retained by the manager for the liquidation, in manner hereinafter provided, of the debts due and liabilities incurred by the debtor other than those so due or incurred to Government, and also for the repayment, either before or after the liquidation of such debts and liabilities, of any loan received from Government under this Act for the purposes of the management.

Residue how disposed of.

CHAPTER V.

Proof of Debts and Scheme for Liquidation.

Act XX of 1881, section 12.

12. On the publication of the order of management, the Collector shall publish in the *Fort St. George Gazette* a notice in English and the vernacular calling upon all persons having claims against the debtor, or the property under management, to notify the same in writing to the Collector within six months from the date of the publication.

Notice to claimants against debtor.

He shall also cause copies of such notice to be exhibited at the revenue kachahrís in the district in which the said property is situate and at such other places as he thinks fit.

Copies of notice to be exhibited.

Act XX of 1881, section 13.

13. Every such claimant shall, along with his claim, present full particulars thereof.

Claim to contain full particulars.

Every document on which the claimant founds his claim, or on which he relies in support thereof, shall be delivered to the Collector along with the claim.

Documents to be given up.

If the document be an entry in any book, the claimant shall produce the book to the Collector, together with a copy of

Entries in books.

the entry on which he relies. The Collector shall mark the book for the purpose of identification, and, after examining and comparing the copy with the original, shall return the book to the claimant.

Exclusion of documents not produced.

If any document in the possession or under the control of the claimant is not delivered or produced by him to the Collector along with the claim, the Collector may refuse to receive such document in evidence on the claimant's behalf at the investigation of the case.

Act XX of 1881, section 14.

Claim not duly notified to be barred.

14. Every such claim (other than claims of the Government) not notified to the Collector, within the time and in the manner required by such notice shall, except as provided in section nineteen, clause (*d*), be deemed for all purposes and on all occasions, whether during the continuance of the management or afterwards, to have been duly discharged:

Provision for admission of claims within further period of six months.

Provided that, when proof is made to the Collector that the claimant was unable to comply with the provisions of section twelve, the Collector may receive such claim within the further period of six months from the expiration of the original period of six months.

Act XX of 1881, section 15.

Determination of debts and liabilities.

15. The Collector shall inquire into the history and merits of every claim received under sections twelve and fourteen, and shall, in accordance with the rules to be made under this Act, determine the amount of the debts and liabilities (if any) justly due to the several claimants.

Act XX of 1881, section 16.

Power to rank debts and to fix interest.

16. If such amount cannot be paid at once, the Collector shall then proceed to rank such debts and liabilities according to the order in which they shall be paid, and to fix the interest (if any) to be paid thereon, respectively, from the date of the final decision thereon to the date of the payment and discharge thereof.

Act XX of 1881, section 17.

Scheme for liquidation.

17. When the total amount of the debts and liabilities (including those due and incurred to Government) has been

finally determined, the Collector shall prepare and submit to the Board of Revenue a schedule of such debts and liabilities, and a scheme (hereinafter called the liquidation-scheme) showing the mode in which it is proposed to pay and discharge the same, whether from the income proceeds of the property under management, or with the aid of funds raised under the powers hereinafter conferred, or partly in one of such ways and partly in the other.

Provisions of scheme.

Every such scheme shall further provide for the continuance of the payments to be made by the manager under section eleven, and for the repayment of the money (if any) which it is proposed to borrow from Government under this Act; and may provide for the improvement of the property under management either from the said income or with the aid of the funds raised as aforesaid, or partly in one of such ways and partly in the other.

Proceedings of Board of Revenue on submission of scheme.

18. The Board of Revenue may— Act XX of 1881, section 18.

(*a*) as often as it thinks fit send back such scheme to the Collector for revision and direct him to make such further inquiry as may be requisite for the proper preparation of the scheme, or

(*b*) sanction any liquidation-scheme or any revised liquidation-scheme submitted to it, either as it stands, or subject to such modifications as it may deem expedient.

(*c*) in like manner, revise a sanctioned liquidation scheme on the falling in of any reversion to which the debtor is entitled. [*New.*]

Act XX of 1881, section 19.

Power to relinquish management.

19. At any time before it has sanctioned a liquidation-scheme under section eighteen, the Board of Revenue may, by an order published in the *Fort St. George Gazette*, direct that on a date fixed by such order the management shall be relinquished.

On the date so fixed—

(*a*) the management shall terminate;

(*b*) the owner of the property under management shall be restored to the possession thereof, subject to any sales or leases made under section ten;

(*c*) any residue of the proceeds of such sales or of the rents and profits of the said property retained under the last clause of section eleven shall be paid to him; and

(*d*) the proceedings, processes, executions and attachments stayed and suspended under section eight, and the debts and liabilities barred by section fourteen, shall revive.

In calculating the periods of limitation applicable to suits to recover and enforce debts and liabilities revived under this section, the time during which the management has continued shall be excluded.

CHAPTER VI.

OF THE PROCEEDINGS SUBSEQUENT TO SANCTION OF THE LIQUIDATION-SCHEME.

Act XX of 1881, section 20.

20. When the Board of Revenue sanctions the liquidation-scheme, it shall notify the fact of such sanction at such places and in such manner as the local Government may from time to time by rule direct; and thereupon—

Effects of sanctioning scheme.

1*st*, all proceedings, processes, executions and attachments stayed or suspended under section eight shall be for ever barred, and

2*nd*, every debt or liability due or owing to any person which was provable before the Collector shall be extinguished; and such person shall be entitled to receive under the liquidation-scheme the amount (if any) finally awarded to him under Chapter V of this Act in respect of such debt or liability.

Act XX of 1881, section 21.

21. If the property under management or any part thereof be in the possession of a mortgagee or conditional vendee, the manager, at any time after the liquidation-scheme has been sanctioned as aforesaid, may, by an order in writing, require such incumbrancer to deliver up possession of the same to him at the end of the then current revenue year.

Power to remove mortgagee in possession.

If such incumbrancer refuse or neglect to obey such order, the manager may, without resorting to a Civil Court, enter upon the property and summarily evict therefrom the said incumbrancer and any other person obstructing or resisting on his behalf.

Nothing in this section shall be held to affect the right of any incumbrancer to receive, under the liquidation-scheme, the amount (if any) awarded to him under Chapter V of this Act.

Act XX of 1881, section 22.

22. If the property under management or any part thereof be in the possession of any person claiming to hold under a lease dated within the three years immediately preceding the commencement of the management, the Collector, with the sanction of the Board of Revenue, may inquire into the sufficiency of the consideration for which the lease was given; and if such consideration appear to him insufficient may by order, at any time after the liquidation-scheme has been sanctioned as aforesaid, authorize the manager either to set aside the lease or to require the person so in possession to pay such consideration for the said lease as the Collector thinks fit; and in default of such payment the lease shall be cancelled.

Power to inquire into consideration given for leases.

Act XX of 1881, section 23.

23. Subject to the rules made under section thirty-one, the manager, after the liquidation-scheme has been sanctioned as aforesaid, shall have power to demise all or any part of the property under management for any term of years not exceeding twenty years absolute, to take effect in possession, in consideration of the payment to him of any fine, or without fine, and reserving such rents, and under such conditions, as may be agreed upon.

Power to lease.

Act XX of 1881, section 24.

24. At any time after the liquidation-scheme has been sanctioned as aforesaid, the manager, with the previous assent of the Board of Revenue, shall have power to raise any money which may be required for carrying out such scheme—

Power to raise money by mortgage sale or loan.

(*a*) by demising by way of mortgage the whole or any part of the property under management for a term not exceeding twenty years from the publication of the order of management; or

(*b*) by selling, by public auction or by private contract, and upon such terms as the manager thinks fit, such portion of the said property as may appear expedient; or

(*c*) by borrowing money from Government at such rate of interest as appears reasonable to the local Government.

Act XX of 1881, section 25.

25. The manager's receipt for any moneys, rents or profits raised or received by him under this Act shall discharge the person paying the same therefrom and from being concerned to see to the application thereof.

Manager's receipt to be a discharge.

Act XX of 1881, section 26.

26. When the debts and liabilities mentioned in the liquidation-scheme and the amount of any loan received from Government under clause (*c*) of section twenty-four, together with the interest (if any) due thereon, have been paid and discharged, the Board of Revenue shall publish in the *Fort St. George Gazette* a notice fixing a date for the termination of the management.

Termination of management.

On the date so fixed the management shall terminate, and the owner shall be placed in the possession and enjoyment of the property under management, or of such part thereof as has not been sold by the manager under the power conferred by sections ten or twenty-four, but subject to the leases and mortgages (if any) granted and made by the manager under the powers conferred by sections ten, twenty-three and twenty-four.

Restoration of owner.

Act XX of 1881, section 27.

27. If the debtor dies after the publication of the order of management and before the management has been terminated in either of the modes hereinbefore provided—

Death of debtor during management.

1*st*, the management shall continue and proceed in all respects as if such debtor were still living;

2*ndly*, any person succeeding to the whole or any portion of the property under management shall, while such management continues, be subject in respect of such property to the disabilities imposed by clauses (*b*) and (*c*) of section nine; and

3*rdly*, no Civil Court in British India shall, during the continuance of the management, issue any attachment or other process against any portion of the property under management for or in respect of any debt or liability incurred by any such person whether before or after his said succession.

Act XX of 1881, section 28.

28. When a person has been restored under section twenty-six to the possession of any property, no mortgage, charge, lease or alienation of such property, or of any part thereof, made by such person shall be valid as to any time beyond his natural life.

Mortgages, &c., made by restored jagirdar valid only for his life.

CHAPTER VII.

Of Appeal and Revision.

Act XX of 1881, section 29.

29. An appeal against any decision or order under sections fourteen, fifteen, sixteen, twenty-one and twenty-two, and imposing a fine or imprisonment in exercise of the powers conferred by section thirty-four, shall lie to the Board of Revenue, if preferred within six weeks from the date of such decision or order.

Appeal.

There shall be no appeal against the decision of the said Board on such appeal.

Act XX of 1881, section 30.

30. The Board of Revenue may, of its own motion or on the application of any person concerned, call for the proceedings in any case under this Act, and pass such order thereon consistent with the provisions of this Act as it thinks fit.

Power to call for proceedings and pass order thereon.

CHAPTER VIII.

Miscellaneous.

Act XX of 1881, section 31.

31. The Local Government may make rules consistent with this Act—

Power to make rules.

(*a*) to regulate the security to be required from subordinate officers under this Act;

(*b*) to regulate the procedure in all cases under this Act;

(*c*) for the guidance of officers enquiring into and determining on claims under Chapter V of this Act; and in particular as to the mode of taking account as between the claimant and the debtor and as to the allowance of interest (if any) on each of the principal debts and liabilities so determined, from the date on which it was incurred down to the date of the determination, and on the aggregate amount of such debts and liabilities from the date of the determination down to the date of payment, and as to the order of paying debts and liabilities and repaying any loan received hereunder from Government;

See Act XVI of 1882, section 12.

(*d*) for investing any moneys received or raised by the manager under this Act in any Government securities of British India and for the sale of such securities; and

(*e*) generally to carry out the provisions of this Act.

Such rules shall be published in the *Fort St. George Gazette* and shall thereupon have the force of law.

Act XX of 1881, section 33.

Managers to be public servants.

32. Every manager appointed under this Act shall be deemed a public servant within the meaning of the Indian Penal Code.

Act XX of 1881, section 34.

Investigation to be deemed a judicial proceeding.

33. Every investigation conducted by the Collector with reference to any claim preferred before him under this Act, or to any matter connected with any such claim, shall be taken to be a judicial proceeding within the meaning of the Indian Penal Code.

Act XX of 1881, section 35.

Power to summon witnesses and compel production of documents.

34. For the purposes of this Act, the Collector may summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents, by the same means and, as far as possible, in the same manner, as is provided in the case of a Civil Court by the Code of Civil Procedure.

Act XX of 1881, section 36.

Bar of suits.

35. No suit or other proceeding shall be maintained against any person in respect of anything done by him *bona fide* pursuant to this Act.

Act XX of 1881, section 37.

Saving of jurisdiction of Courts in Madras in respect of certain suits.

36. Nothing in this Act precludes the Courts in the Presidency of Madras having jurisdiction in suits relating to the succession to any immoveable property brought under the operation of this Act from entertaining and disposing of such suits; but to all such suits the manager of such property shall be made a party.

[*New.*]

Bar of jurisdiction of the Court of Wards.

37. The jurisdiction of the Court of Wards shall not extend to proprietors of estates made subject to this Act, during the continuance of management thereunder.

STATEMENT OF OBJECTS AND REASONS.

The absence in the Presidency of Madras of an Act providing for the relief of proprietors of encumbered estates by management of such estates by or under the control of Government officers has been felt by the classes concerned, who have prayed for the enactment of a law for this purpose similar to those which exist for other provinces. The present Bill is designed to meet this want. It is modelled generally on the Sindh Encumbered Estates Act, and as it is found necessary to bar the jurisdiction of Civil Courts throughout British India and to affect the operation of the Code of Civil Procedure and the Limitation Act without, as well as within, the Presidency, the proposed legislation is within the competence of the Council of the Governor-General alone.

REVENUE DEPARTMENT.

NOTES CONNECTED WITH G.O., NO. 958, REVENUE, DATED 7th NOVEMBER 1893.

Board's Proceedings, No. 509, *Land Revenue, dated 4th September* 1893.

[SUBJECT.—*Regarding Encumbered Estates Bill.*]

Circulated,

E. GIBSON,
21-9-93.

The Board point out, in very forcible language, that the principle of the Bill involves very large restriction on the power of the court, and the transfer to executive authorities of functions of a judicial character, all which may be admitted. The proposed legislation is no doubt of a very exceptional and drastic character and it is legitimately a question for discussion whether policy requires legislation of the kind. The Board propose to substitute for it a Bill empowering the Court of Wards to take encumbered estates under management under the conditions applicable to estates under wardship. But legislation of this kind involves nothing in the shape of liquidation of the property, of marshalling the debts, and the claims of the creditors, and of arrangement for giving them a dividend on their claims such as can be given consistently with the salvation of the estate. It would in fact give no advantage at all to the encumbered proprietor, except somewhat better management; he would have no protection whatever against his creditors; and the more rapacious or skilful of them would have to encounter no greater difficulty than at present in pushing their claims through the courts and procuring its sale and annihilation under decrees. For the object in view,—the salvation of estates—such legislation would be utterly futile and inadequate, and no boon at all to encumbered land-owners. If it is desired to afford protection and help to this class nothing short of a measure of liquidation of debt such as that provided in the Bill will be at all adequate. The Board in paragraph 9 say that in Madras there is no case for legislation of the kind and that estates which cannot be saved by careful management should not be saved at all.

But there are few cases in which estates at all heavily encumbered can be so saved. A composition of some sort with the creditors must be provided for if estates involved, as are for instance Kalahasti or Karvetnagar, are to be saved; and it seems certainly better that under such provision all the creditors should get such dividend as the estate can fairly pay, than that, under the ordinary scramble in the courts, some and probably the most usurious and least deserving should get all and the rest nothing.

If there is to be a law for the salvation of encumbered estates, I should certainly prefer to make it a strong and effective one and none can be so which does not provide for composition and marshalling of claims and for liquidation by dividend as in insolvency. The question of policy is that for decision. I confess I am not very strongly in favour of any Bill and, if one existed, I would apply it only in very rare cases. Such cases may however arise even in Madras; and I certainly prefer if there is to be a Bill at all, that it should be adequate to the purpose.

As to the Board's suggestion of detail I have noted briefly in the margin of the printed proceedings.

H.E.S[TOKES].
29-9-93.

The Board of Revenue has taken strong objection * to the character of the Bill. It considers that no necessity for such legislation in this Presidency has arisen or is to be anticipated and that while it is certainly desirable that the encumbered estates of prominent individuals should be saved from ruin, they consider that if they cannot be saved by careful management they should not be saved at all. The Bill is practically an Insolvent Act for encumbered land-owners. My honourable colleague Sir H. Stokes † admits that it is of a very exceptional and drastic character but considers that anything short of such a measure would be useless to protect and help that class of land-owners. He prefers a Bill which is adequate to the purpose, though he admits that if the Bill was law he would apply it only in very rare cases. I do not object to the drastic character of the Bill, because I hold that it should be applicable only in the cases of large estates and then only when it is considered expedient, on grounds of public policy, to rescue an ancient estate from being entirely dissipated and broken up in order to discharge the debts of its owner, and for this purpose nothing short of a Liquidation Act is of any use. There is a precedent for such action in the case of the late Prince Azim Jah, whose debts were liquidated by Government by virtue of Madras Act III of 1867, and on that occasion a special Commission was appointed to make a list of all the debts, and all creditors wishing to take advantage of the liquidation were bound by their own consent in writing to abide by the Commission's award, and in this way a large amount of debts was paid off for a much smaller amount. While, however, I do not agree with the Board in their objections to the character of the Bill, I agree with them in some of their objections to its details. When the Bill was originally drafted by the Honourable Sir H. Stokes it was applicable to all classes of proprietors of immoveable property and though, at my suggestion, this has been slightly modified, I consider that the modification does not go far enough and agree with the Board in thinking that it should be made clear that petty properties lie outside the scope of the Bill. I see no object in giving the Government discretion to apply the Bill to large and small estates alike. My honourable colleague Sir H. Stokes in his note of August 4th was of opinion that, considering the disabilities to which the Act exposes debtors, its benefits would probably only be sought in the most desperate cases, in which large estates were involved. At the same time he added that he saw no reason why relief should be afforded to big estates and denied to the small ones. I think the Board supply a reason; as they say, the public can have no interest in the maintenance of such estates. It can hence be a question of policy whether a land-owner with an income of Rs. 1,000 a year should be maintained as such or cease to be a land-owner at all. Yet the Bill as it stands includes all inamdars and shotriemdars. This I think is a mistake.

I also agree with the Board that the Bill should not legislate for persons who do not hold direct under Government. I think also that their suggestion that subsequent revision of the liquidation scheme to suit altered circumstances should be provided for is a forcible one. An encumbered estate-holder might, during the process of liquidation, come in for additional property by adoption, succession, or otherwise, and this should at once become available for helping to pay off his debts. This at least is what I understand the Board to mean by the suggestion.

The Board has not noticed the Statement of Objects and Reasons but this seems to me to be open to objection. In the first place, it is not correct to say that

* In its Proceedings, No. 509, dated 4th September 1893.

† In his note, dated 21th September 1893.

This case is hardly a precedent. The funds administered under that Act were not the property of the debtor but were allotted by Government as part of a political settlement.

H. E. S.

Section 6 of the Bill says:—

The order of management shall extend to . . . . all such property which may be acquired by or may devolve upon him (the debtor) during the continuance of the management.

This would cover this class of cases if this is what the Board refers to.

W[ENLOCK].

But it is after the liquidation is over and before the management actually terminates according to the notice to be issued under section 26 that such a contingency might occur. At least I fancy that is what the Board contemplates.

J. H. G.

the present Bill is designed to meet the want that is felt by the absence of provision for the management of encumbered estates by or under the control of Government officers. It is designed to enable Government to extricate the owners of estates from their debts by a process of liquidation, and paying the debtors only a percentage of what is due to them.

Not necessarily.

H.E.S.

Nor is it necessary, in my opinion, that the Bill should be passed by the Viceroy's Council, as being beyond the competence of the Madras Legislative Council, and if this is not necessary, then, beyond question, it will be better to pass the Bill in the local Council, where it will be discussed with much greater keenness than in the Viceregal Council, owing to the much greater personal interest that will naturally be taken in it. When the Honourable Mr. P. Chentsal Rao proposed to introduce an Encumbered Estates Bill for Madras into the Viceregal Council, his offer was declined for this very reason. It is stated in the Statement of Objects and Reasons that it is found necessary to bar the jurisdiction of civil courts throughout British India and to affect the operation of the Code of Civil Procedure and the Limitation Act *without*, as well as *within*, the Presidency. I do not think so. In my opinion, it is sufficient to bar the jurisdiction of the courts in the Madras Presidency. The effect will be that, as all other courts in India can only execute decrees in Madras through the Madras courts, if the jurisdiction of the latter is barred no court in India will be able to execute any process in or against any estate to which the Bill has been applied, or against its owner.

It certainly is necessary in my opinion. If the jurisdiction and processes of courts outside the Presidency were not barred, there would be nothing to prevent the estate being attached and sold under decrees of such courts.

H.E.S.

Even if this argument is sound, which I doubt, there would still be an indirect bar to outside decrees, and this Council has no more power to bar such decrees indirectly than directly.

H.E.S.

Nor will the law of limitation be affected, because section 6 of that Act specifically provides that nothing in it shall affect or alter any special period of limitation prescribed by any special or local law now or hereafter in force in British India. Any limitation, therefore, provided in the Bill would be recognised by the Limitation Act and would *per se* be binding on all courts in India. There seems to me, therefore, to be no reason why the Bill should not be introduced into the Madras Legislative Council. Section 5 of the Indian Councils Act of 1892 now requires that the *previous* sanction of the Governor-General must be obtained to the passing by the local Legislature of any province in India of any Act to repeal or amend, as to that province, any law or regulation made either before or after the passing of the Act of 1892 by any other authority in India than the local Legislature, but if that sanction is given this can be done. Otherwise, beyond the substitution of the word "*province*" for "*Presidency*" and of the words "*as to that province*" for "*so far as they affect such Presidency*," there is no alteration made in section 42 of the Indian Councils Act of 1861 and in the Bill under discussion there is no specific proposal to amend or alter any law passed by the Government of India, though no doubt some of the provisions of the Bill tend to affect the operation of one of those laws, namely, the Civil Procedure Code; but if the Governor-General sanctions the passing of the Bill by the local Council I think it can be passed by that Council. Moreover, looking to the enlargement of the local Councils, it is, I think, a matter for consideration whether all local Acts should not in future be passed by the local Councils under section 5 of the Councils Act of 1892.

The Bill does not establish any such special periods of limitation. It suspends altogether the operation of the ordinary limitation law.

H.E.S.

So long as the estate is under management. That is a period of limitation.

J. H. G.

J. H. G[ARSTIN].
30-9-93.

I quite agree with all that is urged here against an extension of the Court of Wards' powers to encumbered estates and in favour of passing the Bill under discussion. Unless some really drastic powers are granted, no possible good can result. But I take it we are all agreed that if this Bill were passed into law, it would only be allowed to be used in very exceptional cases and in order to preserve large estates from being broken up. Sir H. Stokes says himself he would only apply it in "very rare cases." Under these circumstances I cannot see any objection to a limit being placed in the Bill as to the persons who may be permitted to have it applied to their estates, as it is not intended ever to permit it in the case of petty shotriemdars. *Et hoc genus omne*, why not say so at once? It will at all events save the Board of Revenue a great deal of trouble, for as the Bill stands at present they may be inundated with applications from every description of insolvent land-owner, and will possibly be at a loss to know which application they ought to enquire into, whereas if it was clearly laid down that no landowner paying less than Rs. 10,000 yearly to Government might apply, all parties would be saved a deal of anxiety and trouble. I don't suppose any Government would dream of considering the case of any estate smaller than this. Then why not say so at once? I am afraid I cannot agree with the Honourable Mr. Garstin in thinking that this Bill can be properly carried out through the Madras Legislative Council for reasons which have been already stated, but I wish Sir H. Stokes would see what our honourable colleague has written on this point, and if he would kindly bring the papers to next Council, we could discuss this and the other points there, and finally settle the matter.

W[ENLOCK].
2-10-93.

I agree to limit the operation of the Act to zamindars and jagirdars having landed property yielding an annual gross income of Rs. 50,000 or upwards.

Bring to Council.

H. E. S.
4-10-93.

Seen.

J. H. G.
10-10-93.

In council.

E. G.
11-10-93.

MINUTE BY THE HON. J. H. GARSTIN, C.S.I.

The Encumbered Estates Bill.

When the Honourable Mr. Chentsal Rao proposed to introduce a Bill into the Viceregal Legislative Council for the purpose of dealing with encumbered estates, his offer was declined, not because his Bill was not as drastic as the present one, but merely because the members of the Madras Government were unanimously of opinion that it was better that an Encumbered Estates Bill for Madras should be introduced into the Local Council where it would be more fully discussed than in Calcutta. Now that the present Bill has been drafted, however, my honourable colleagues consider that it is necessary (1) to bar the jurisdiction of the Civil Courts throughout British India and (2) to affect the operation of the Code of Civil Procedure and the Limitation Act without, as well as within, the Presidency, and that therefore the proposed legislation is within the competence of the Council of the Governor-General alone.

If the view taken by my honourable colleagues is held by the Government of India to be correct, that Government will, no doubt, take measures to introduce a Bill into the Viceregal Council, but I do not think such a step is necessary, and if it is not necessary, I consider it would be decidedly preferable to have the Bill passed in the Local Council. Indeed, it seems to me that with the enlarged Local Councils

all local legislation should be dealt with locally in them after the previous assent of the Governor-General in Council has been obtained under section 5 of the Councils Act of 1892, whenever necessary.

My reasons for thinking that it is not necessary to have the Bill passed in Calcutta are—

(1) that it is not necessary specifically to bar the jurisdiction of all Civil Courts throughout India;

(2) that the operation of the Code of Civil Procedure and of the Limitation Act need not be directly affected outside the Presidency, and that, so far as it may be necessary to affect them indirectly, this can be done by an Act of the Local Legislature with the previous consent of the Governor-General in Council.

I consider that, as the Civil Courts of the Madras Presidency alone have jurisdiction therein, if any court in any other part of India is moved to issue any process against the person or property of any land-owner whose estate is under management under the proposed Bill, such court will be unable to execute such process if the jurisdiction of all the Madras Civil Courts is barred, because no court outside the Presidency can execute any process inside the Presidency except through the Madras Courts and that this barring can be effected if the Bill is passed into law by the local Legislative Council. Moreover, under section 8 of the Bill, once an order of management has issued, the estate-owner and his heir become, to all intents and purposes, civilly dead and incapable of entering into any contract involving him or them in pecuniary liability, so that there is no risk of prospective liabilities being incurred by either of them anywhere while the estate is under management, while, in respect of previously existing liabilities, the creditors outside the Presidency would be on exactly the same footing as those within it as regards the liquidation of their claims.

Next, the affecting of the operations of the Civil Procedure Code and Limitation Act both within and without the province, seems to me to be very much the same thing as barring the jurisdiction of the courts all over India, and I hold that, under section 5 of the Indian Councils Act of 1892, the Local Legislature of Madras has the power to repeal or amend, so far as the province of Madras is concerned, either enactment, if the Governor-General in Council gives his previous consent to such a course, and if this is so, then, it is, I think, clear that the said Legislature may, with the previous sanction of the Governor-General in Council, modify or suspend the action of either enactment, or of both of them, temporarily, in respect of any or all estates brought under management by virtue of the present Bill.

J. H. G[ARSTIN].
20-11-93.

Note—

I have amended the copy of the Bill in G.O. No. 732, dated 16th August 1893, I find no other in the file.

H E.S.
24-10-93.

Yes.

E.G.
23-10-93.

Orders are requested regarding the amendments to be made.

(1) *Section* 3.—Whether the word "gross" is to be inserted before "income" in the addition made in this section.

(2) *Section* 3 (3).—The Hon'ble Sir Henry Stokes has noted "yes" on the Board's suggestion that when an estate is under the Court of Wards, application under this section should not be made except by the court.

* This would apparently meet the case, since under Regulation V of 1804 the Court of Wards appoints guardians

E G.
23-10-93.

I think so.

H.E.S.

For orders as to whether a clause to the above effect is to be added. If the word in the fourth line of the last clause of this section were * "shall" instead of "may" no addition would then seem to be necessary.

Is this clause to be omitted?

E.G.

I think it should be retained. The Bill extends to all the property of a proprietor and cases might occur where such proprietor had, besides the principal estate entitling him to the benefit of the Act, minor properties charged with the payment of rent or other dues to a superior holder. There is probably no inferior tenure in the Presidency yielding Rs. 50,000 rental, and no danger of the Act being applied in respect of such properties alone; but if there are, I don't see why the Act should not extend to them. They must be zamindaris or jaghirs.

H.E.S.

Yes, so I understand.

E.G.
H.E.S.

* Is the jurisdiction of the Court of Wards to be barred only in the case of a *minor*?

Yes.
E.G.

It will be better to add a section in the miscellaneous chapter as follows:—

37. The jurisdiction of the Court of Wards shall not extend to proprietors of estates made subject to this Act during the continuance of management thereunder.

Bar of jurisdiction of Court of Wards.

Cases might occur where the proprietor as well as the heir might be subject to incapacity.

H.E.S.

I think this is intended.

E.G.
23-10-93.

In section 18 add—

(c) in like manner, revise a sanctioned liquidation scheme on the falling in of any reversion to which the debtor is entitled.

New.

H.E.S.

(3) *Section* 11—*Thirdly*.—Whether this clause is to be omitted with reference to the Honourable Member's remark on the Board's Proceedings to the effect that this provision will probably not be required in Madras.

(4) *Section* 21.—Whether this section is to be added to the sections named in section 29 with reference to the Honourable Member's remark that an appeal to the Board may be allowed against acts done under this section.

(5) *Section* 27.—Whether a clause is to be added to this section to the effect that "when the next heir in the circumstances contemplated by this section is a minor, * the jurisdiction of the Court of Wards should be barred so long as the management continues.

(6) Whether a provision is to be inserted giving power to the Board to revise a liquidation scheme once sanctioned under section 18, when a revision is called for by subsequent events, such as devolution of additional property on the debtor. Please see the Hon'ble Mr. Garstin's remarks on this point at page 2 *supra*.

R.V.S.
21-10-93.

Draft order marked for issue on 7th November 1893.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

READ—the following Proceedings of the Board of Revenue (Land Revenue), No. 509, dated 4th September 1893:—

Read—Government Order, No. 732, Revenue, dated 16th August 1893.

Read—again Government Order, No. 606, dated 10th July 1893, paragraphs 10 and 11.

Resolution—No. 509, dated 4th September 1893.

With the above order the Government forwards to the Board of Revenue, for report, a Bill for taking encumbered estates in this Presidency under Government management. The Bill is drafted on the lines of the Sindh Encumbered Estates Act—India XX of 1881 as amended by XI of 1884—and the main points on which the present Bill differs from its model are noticed in the covering Government Order.

2. The Bill places encumbered estates taken under Government management under the control of the Board of Revenue, not of the Court of Wards, and the powers which it grants in respect of such estates are far larger than the Court of Wards possesses in regard to the estates of minors and females under its management.

3. According to the provisions of this Bill, when Government orders an estate to be taken under management,

(1) All civil proceedings then pending in respect of debts due by the estate are suspended, and after the final "liquidation scheme" is sanctioned, they are for ever barred (sections 8 and 20).

(2) No fresh civil proceedings can be taken against the estate while it remains under management (section 8).

(3) All claims not notified to the Collector within a certain time are held to be discharged (section 14).

(4) In making out the "liquidation scheme," the Collector is empowered and directed, under rules to be framed by the Local Government and subject to appeal to and final approval of the Board * of Revenue, to investigate all claims against the estate, to determine what is "justly" due to each creditor and where, as will be the case in most instances, the debts cannot be paid off at once, to determine the order in which they shall be paid, and to fix the rate of interest, if any, to be paid until each claim is discharged (sections 15 to 19 and 31). And a "liquidation scheme" once sanctioned, nothing can be recovered in respect to the claims therein dealt with but what is awarded in the scheme (section 20).

* Sections 18 and 29.

4. Assuming that the words "determine the amount . . . *justly* due to the several claimants" in section 15 of the Bill mean that the Collector is to cut down debts for which due consideration has not been received and which have been swollen by exorbitant rates of interest, it follows that the Collector, acting under the guidance of rules passed by the executive Government, and under the supervision of another executive authority—the Board—is invested with the powers of a Court of Equity or Bankruptcy to a most enormous extent.

5. The executive, that is to say, first fixes what is "justly due," then arranges the claims in order of merit (apparently again on considerations of equity) and, lastly, allows interest or not as it pleases upon the deferred claims. No person affected by these decisions has any appeal except to the executive itself as represented by the Board whose decision is final (section 29), and such a person has to take what the "liquidation scheme" gives him or nothing at all.

6. The Board submits that this colossal transfer of judicial powers to the Revenue authorities, and the wholesale exclusion of the jurisdiction of the Civil Courts, would be an arbitrary and re-actionary measure which the circumstances of this Presidency do not in the least call for. Moreover, the making out of a "liquidation scheme" will throw an immense amount of work upon Collectors, who have but too little time to spare as it is, and will burden the Board and Government * with a mass of appeals. Every creditor whose claim has been cut down or to whom payment is deferred will, of course, come up against the Collector's decision. And even the consideration of a "liquidation scheme" as it stands will give no inconsiderable amount of extra work to the Board.

* So far as an appeal will lie to Government against the general liquidation scheme, outside of the matters dealt with in sections 14, 15 and 16 in regard to which the Board's decision is final (section 29).

7. To continue the analysis of the Bill:—

(5) Any person in occupation of property by mortgage in an encumbered estate may, when the liquidation scheme comes into operation, be summarily ejected (section 21).

(6) The Collector may, after the Board has sanctioned an inquiry, summarily cancel, or order the payment of additional consideration in respect thereof, any lease executed within three years of the assumption of management which appears to have been granted on insufficient consideration (section 22), and in respect of acts done under either of these sections the Civil Courts are likewise forbidden to interfere unless there has been manifest bad faith (section 35), while in respect to section 21, the extinction of liabilities provided by the second clause of section 20 would likewise apply. It has to be noted also that against acts done under section 22, as in the case of proceedings under sections 14—16, there is no appeal even to the executive Government (section 29).

8. Lastly (7)—section 8 (3) (*a*) of the Bill prevents the proprietor of an estate under management and his heir from entering into any contract involving either of them in pecuniary liability. In this connection the Board begs to point out that when India Act IV of 1892 was under discussion an amendment in this sense, but less sweeping in its character, was proposed by the Honourable Mr. Chentsal Rao and negatived, and it would invite the particular attention of Government to the speech of the Honourable Sir Philip Hutchins in dealing with that amendment—*vide* page 51, Part VI of the *Gazette of India* of 2nd April 1892.

9. The Bill before the Board has followed the provisions of the Sindh and Chota Nagpore Acts, although the circumstances of this Presidency are entirely different. In Sindh, which like the rest of the Bombay Presidency possesses no Court of Wards, there was a much indebted and historic aristocracy, while the Lieutenant-Governor of Bengal, when introducing the Bill which afterwards passed into law as Act VI of 1876 (India), took care to point out that Chota Nagpore was a hill country with large landowners "virtually in the position of Native chiefs"—*vide* page 54 of the supplement to the *Gazette of India* of 29th January 1876. Both these Acts were therefore dictated, and doubtless justified, by political considerations. There are no such considerations to be taken into account in Madras, as is shown by the refusal of Government, in Government Order, No. 606, dated 10th July 1893, to legislate in the direction of saving old estates from partition or alienation, and from the heavy litigation expenses consequent on the present uncertain position of the law in regard to these matters; and by its remarks on zemindars as a class in paragraphs 7 and 9 of the same order.

Vide page 6 of the Proceedings of the Municipal Legislative Council for 1876.

10. The law is very careful in preserving the rights of every owner to deal with his own property, and no part of this right should be taken away without strong reason; but the Bill now under discussion proposes legislation which would have the effect of entirely ousting the Civil Courts in regard to numerous important matters hitherto within their sole and unquestioned jurisdiction. It is certainly desirable that the encumbered estates of prominent individuals should be saved from ruin, but if (apart from such assistance as might be afforded by a law of entail) they cannot be saved by careful management, they should not be saved at all. Nothing short of supreme necessity justifies the suspension of the ordinary law of the land and the silencing of the Courts in the manner now proposed, and the Board submits that in this Presidency no such necessity has arisen or is to be anticipated. The Agency tracts, it must be remembered, are already secured special treatment by the Scheduled Districts Act and are outside the operation of the Civil Procedure Code.

11. The Board further begs to point out that, whereas in the Sindh Act (section 3, Act XX of 1881), interference is limited to the case of zamindars paying to Government not less than Rs. 300 a year the proposed Madras Bill would extend to every petty shrotriemdar and inamdar in the Presidency.

12. What the Board had in view when in paragraph 27 of the Board's Proceedings dealt with in Government Order, No. 606, dated 10th July 1893, it proposed an Encumbered Estates Act was a very different piece of legislation, viz., India Act IV of 1892, which dealt with encumbered estates in Bengal proper. That Act merely allows the Local Government, on the application of a landholder, to put his estate under the Court of Wards (section 3), and thereupon it becomes subject, like the estates of minors and females, to the management of the Court under the provisions of Act IX of 1879 (Bengal) which runs in the main on the same lines as Madras Regulation V of 1804, though it is much better drafted. A similar measure is, the Board considers, all that is required for this Presidency. It is not the function of the executive Government to interfere with or adjudicate upon the debts already contracted by landholders not *primâ facie* disqualified by age, sex or infirmity—that is for the judicial tribunals to determine. All that the executive can equitably do is, on the request of such a landholder, to take his estate under management (or preferably put it under the body established by law to protect the interests of disqualified landowners—the Court of Wards) and give him the benefit of efficient administration and of the protection accorded to wards, viz., that while his estate is under management, it shall not be sold on account of Government demand though such demand shall have precedence of private debts (sections 14 and 17 of the Court of Wards Regulation), and that during this period the managing authority shall represent his interests. Further, as provided by section 17 of the Court of Wards Regulation, the consent of the managing authority should be required for the re-payment of any private debts, leaving doubtful ones to be fought out in the Civil Courts.

13. The Madras Court of Wards Regulation is undoubtedly capable of improvement, and the Board hopes at some not very distant date to be able to submit proposals for its amendment, but it is perfectly workable, and if legislation on the lines of India Act IV of 1892 were adopted, the additional estates which might thus be put under the Court's charge would be efficiently managed.

14. It may be noted that this plan of simply putting the owners of encumbered estates on the same footing as minors or incapacitated wards was proposed for this Presidency so long ago as 1875—*vide* section 4 (*f*) of the draft Court of Wards Bill communicated with Government Order, No. 39, Legislative, dated 21st July 1875, and paragraph 3 of the Select Committee's covering report read in the same order.

Please see paragraph 2 of the Hon'ble Mr. Cunningham's speech at page 14 of the Proceedings of the Madras Legislative Council for 1875-76.

R.V.S.

15. Apart from the main objections to its principles which have been urged above, the Board has to submit the following remarks on individual sections of the Bill:—

Section 3 (1).—There should certainly be some limitation to the first clause so as to make it clear that petty properties will lie outside the scope of the Bill. The

public can have no interest in the maintenance of small estates. The Board would limit the application of the Bill to estates with an annual rent value of Rs. 10,000, determined, as was proposed in section 6 of the draft Court of Wards Bill of 1875 above referred to, in the manner prescribed for the purpose of levying land-cess under the Local Boards Act (section 64 of Madras Act V of 1884).

I would lay down no absolute limit. The application of the Bill should be discretional with Government.

H.E.S.

(2) The application should be made through the Collector so as to give him opportunity for expressing his views thereon.

He will have it.

H.E.S.

(3) When an estate is under the Court of Wards, application under this section should not be made except by the Court.

Yes.

H.E.S.

Section 8 (3) (*a*).—The Board considers this provision too sweeping and absolute—see remarks in paragraph 8 above.

I do not agree.

H.E.S.

Section 11 (3).—The Board does not think it necessary to legislate for persons who do not hold direct under Government—see remarks on section 3 above.

Probably not in Madras.

H.E.S.

Section 15—"Determine the amount . . . justly due to the several claimants."

It should be made clear whether this does or does not involve the extensive equity jurisdiction supposed by the Board in its remarks on the general provisions of the Bill. And the principles which are to guide the Collector in the important and delicate task of adjudication under this section and *section* 16 should be laid down by law and not left to mere administrative enactment under section 31.

It certainly does.

H.E.S.

Section 20.—Considering the finality of the "liquidation scheme" in regard to all claims against the estate, it ought, the Board thinks, to receive the sanction of Government, or an appeal to Government by any person aggrieved by it should be specially provided. Subsequent revision of the liquidation scheme to suit altered circumstances should also be provided for.

One to the Board is quite enough.

H.E.S.

What can they be?

H.E.S.

Section 18 appears to cover only revisions before final sanction.

Similarly, an appeal to the Board should be allowed against acts done under *section* 21 and an appeal to Government against proceedings under *section* 22.

May be done.

H.E.S.

Unnecessary.

H.E.S.

Section 27.—When the next heir in the circumstances contemplated by this section is a minor, the jurisdiction of the Court of Wards should be barred so long as the management continues.

Yes.

H.E.S.

Section 29.—As above remarked, considering the final character of the actions of the executive under this Bill, there should at least be an appeal to the highest executive authority—the Government—in matters of such moment as decisions under sections 14, 15, 16, 21 and 22. All the Board's orders in regard to the general administration of the estate including the allowances fixed under section 11 (4) should be final, and an intermediate appeal should be provided from the manager to the Collector.

Unnecessary.

H.E.S.

So they are.

H.E.S.

What is meant? The Manager is under the Collector's control, section 9.

16. The Board has, through the courtesy of the Honourable Mr. Chentsal Rao, C.I.E., obtained a copy of a Bill which he proposed to introduce into the Legislative Council of India and which, with the connected papers including the opinions of a number of representative native gentlemen, is herewith submitted to Government.

Vide papers with the Demi-official letter to Mr. Chentsal Rao, dated 13th October 1892, No. 351.

R.V.S.

That Bill, which goes on the lines advocated by the Board, viz., to allow important embarrassed estates to be placed by Government, at the request of the owner, under the management of the Court of Wards, is, the Board ventures to think, a much more modest, workable and equitable measure than the proposed Government enactment, and if the Government so wishes the Board will be happy to submit remarks and suggestions thereon. It need only say here that the scope of section 9 (3) would have to be restricted for the reasons set forth in paragraph 8 above.

17. The Board's Second Member takes exception to the provision in section 3 of the Government Bill which allows an heir to invoke the interference of Government. He would restrict the power of application for management to the owner of the estate for the time being. The other Members consider that if the main policy and principles of the Government Bill be admitted there is no reason why the heir of an improvident landholder should not be allowed to invoke its aid.

(A true Copy and Extract.)

(Signed) W. S. MEYER,
Acting Secretary.

To the Secretary to Government, Revenue Department,
with one enclosure.

Exd. P. Seetharam.

PROCEEDINGS OF THE BOARD OF REVENUE
(LAND REVENUE).

READ—the following Government Order, dated 16th August 1893, No. 732, Revenue :—

Read—again Government Order, dated 10th July 1893, No. 606, paragraphs 10 and 11.

Order—dated 16th August 1893, No. 732, Revenue.

With reference to the concluding paragraph of the Government Order read above, in which it was stated that steps will be taken to have an "Encumbered Estates Act" passed for this Presidency, the accompanying draft of a Bill on the subject, with "Statement of Objects and Reasons" prepared in the Government office, will be referred for the remarks of the Board of Revenue.

2. It will be seen from the "Statement of Objects and Reasons" that the Bill has been modelled on the Sindh Encumbered Estates Act * which, of all the Acts on the subject appearing in the Indian Statute book, seems most suitable for adoption in this Presidency.

* India Act XX of 1881 as amended by Act XI of 1884.

3. The sections of the model Act providing for the organization of the management of estates have been altered so as to suit the circumstances of this Presidency. The management has been placed under the control of the Collector and the Board of Revenue and assimilated as much as possible to management of estates under the Court of Wards. Provision has also been made in section 11, clause (1), for the inclusion under costs of management of a rate to be charged under the recent India Act X of 1892.

4. It will be observed that the model Act and all other similar Acts have been departed from in two rather important respects :—

(1) In including under the management and making responsible for the liquidation of the debts, moveable property attachable in execution under the Code of Civil Procedure as well as immoveable estate. In some of the Acts moveable property is referred to, but in none of them is it placed under management. As, however, most embarrassed proprietors possess jewels and valuables, elephants, horses, &c., to a considerable value, which are now liable for their debts, it is only fair that, when all processes of Courts are barred, such property should be made available for the liquidation of the debts. It is provided in section 24 of the Bill that the previous assent of the Board of Revenue shall be necessary for the sale of such property.

(2) In the Sindh Act and in most others the function of inquiring into the debts and declaring the amount at which they shall be taken is assigned to the manager. As, however, in this Presidency the manager will be a subordinate officer of standing seldom above that of a Deputy Collector of the lowest grade, the Government considers that a function of such delicacy and importance ought not to be assigned to officers of this class and the duty has accordingly been assigned in chapter V of the Bill to District Collectors.

5. No "extent clause" has been inserted in the Bill as it will affect Courts throughout British India. It will be observed from section 3 of the Bill that it will apply to estates situated in the scheduled districts as elsewhere in this Presidency.

6. It will be seen from the "Statement of Objects and Reasons" that the Bill can be dealt with only in the Supreme Legislative Council; and as His Excellency the Governor in Council considers that no time should be lost in getting the Bill passed, the Board of Revenue is requested to reply to this reference within a fortnight from the date of receipt of this order.

(True Extract.)

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

To the Board of Revenue (Land Revenue), with Bill and Statement of Objects and Reasons.

Enclosure No. 1.—Draft Bill.

Enclosure No. 2.—Statement of Objects and Reasons.

Resolution—dated 4th September 1893, No. 509.

With the above order the Government forwards to the Board of Revenue, for report, a Bill for taking encumbered estates in this Presidency under Government management. The Bill is drafted on the lines of the Sindh Encumbered Estates Act—India XX of 1881 as amended by XI of 1884—and the main points on which the present Bill differs from its model are noticed in the covering Government Order.

2. The Bill places encumbered estates taken under Government management under the control of the Board of Revenue, not of the Court of Wards, and the powers which it grants in respect of such estates are far larger than the Court of Wards possesses in regard to the estates of minors and females under its management.

3. According to the provisions of this Bill, when Government orders an estate to be taken under management,

(1) All civil proceedings then pending in respect of debts due by the estate are suspended, and after the final "liquidation scheme" is sanctioned, they are for ever barred (sections 8 and 20).

(2) No fresh civil proceedings can be taken against the estate while it remains under management (section 8).

(3) All claims not notified to the Collector within a certain time are held to be discharged (section 14).

(4) In making out the "liquidation scheme", the Collector is empowered and directed, under rules to be framed by the Local Government and subject to appeal to and final approval of the Board * of Revenue, to investigate all claims against the estate, to determine what is "justly" due to each creditor and where, as will be the case in most instances, the debts cannot be paid off at once, to determine the order in which they shall be paid, and to fix the rate of interest, if any, to be paid until each claim is discharged (sections 15 to 19 and 31). And a "liquidation scheme" once sanctioned, nothing can be recovered in respect to the claims therein dealt with but what is awarded in the scheme (section 20).

* Sections 18 and 29.

4. Assuming that the words "determine the amount . . . *justly* due to the several claimants" in section 15 of the Bill mean that the Collector is to cut down debts for which due consideration has not been received and which have been swollen by exorbitant rates of interest, it follows that the Collector, acting under the guidance of rules passed by the executive Government, and under the supervision of another executive authority—the Board—is invested with the powers of a Court of Equity or Bankruptcy to a most enormous extent.

5. The executive, that is to say, first fixes what is "justly due," then arranges the claims in order of merit (apparently again on considerations of equity) and, lastly, allows interest or not as it pleases upon the deferred claims. No person affected by

these decisions has any appeal except to the executive itself as represented by the Board whose decision is final (section 29), and such a person has to take what the "liquidation scheme" gives him or nothing at all.

6. The Board submits that this colossal transfer of judicial powers to the Revenue authorities, and the wholesale exclusion of the jurisdiction of the Civil Courts, would be an arbitrary and reactionary measure which the circumstances of this Presidency do not in the least call for. Moreover, the making out of a "liquidation scheme" will throw an immense amount of work upon Collectors, who have but too little time to spare as it is, and will burden the Board and Government * with a mass of appeals. Every creditor whose claim has been cut down or to whom payment is deferred will, of course, come up against the Collector's decision. And even the consideration of a "liquidation scheme" as it stands will give no inconsiderable amount of extra work to the Board.

* So far as an appeal will lie to Government against the general liquidation scheme, outside of the matters dealt with in sections 14, 15 and 16 in regard to which the Board's decision is final (section 29).

7. To continue the analysis of the Bill:—

(5) Any person in occupation of property by mortgage in an encumbered estate may, when the liquidation scheme comes into operation, be summarily ejected (section 21).

(6) The Collector may, after the Board has sanctioned an inquiry, summarily cancel, or order the payment of additional consideration in respect thereof, any lease executed within three years of the assumption of management which appears to have been granted on insufficient consideration (section 22), and in respect of acts done under either of these sections the Civil Courts are likewise forbidden to interfere unless there has been manifest bad faith (section 35), while in respect to section 21, the extinction of liabilities provided by the second clause of section 20 would likewise apply. It has to be noted also that against acts done under section 22, as in the case of proceedings under sections 14—16, there is no appeal even to the executive Government (section 29).

8. Lastly (7)—section 8 (3) (a) of the Bill prevents the proprietor of an estate under management and his heir from entering into any contract involving either of them in pecuniary liability. In this connection the Board begs to point out that when India Act IV of 1892 was under discussion an amendment in this sense, but less sweeping in its character, was proposed by the Honorable Mr. Chentsal Rao and negatived, and it would invite the particular attention of Government to the speech of the Honorable Sir Philip Hutchins in dealing with that amendment—*vide* page 51, Part VI of the *Gazette of India* of 2nd April 1892.

9. The Bill before the Board has followed the provisions of the Sindh and Chota Nagpore Acts, although the circumstances of this Presidency are entirely different. In Sindh, which like the rest of the Bombay Presidency possesses no Court of Wards, there was a much indebted and historic aristocracy, while the Lieutenant-Governor of Bengal, when introducing the Bill which afterwards passed into law as Act VI of 1876 (India), took care to point out that Chota Nagpore was a hill country with large landowners "virtually in the position of Native chiefs"—*vide* page 54 of the supplement to the *Gazette of India* of 29th January 1876. Both these Acts were therefore dictated, and doubtless justified, by political considerations. There are no such considerations to be taken into account in Madras, as is shown by the refusal of Government, in Government Order, dated 10th July 1893, No. 606, to legislate in the direction of saving old estates from partition or alienation, and from the heavy litigation expenses consequent on the present uncertain position of the law in regard to these matters; and by its remarks on zemindars as a class in paragraphs 7 and 9 of the same order.

10. The law is very careful in preserving the rights of every owner to deal with his own property, and no part of this right should be taken away without strong reason; but the Bill now under discussion proposes legislation which would have the effect of entirely ousting the Civil Courts in regard to numerous important matters

hitherto within their sole and unquestioned jurisdiction. It is certainly desirable that the encumbered estates of prominent individuals should be saved from ruin, but if (apart from such assistance as might be afforded by a law of entail) they cannot be saved by careful management, they should not be saved at all. Nothing short of supreme necessity justifies the suspension of the ordinary law of the land and the silencing of the Courts in the manner now proposed, and the Board submits that in this Presidency no such necessity has arisen or is to be anticipated. The Agency tracts, it must be remembered, are already secured special treatment by the Scheduled Districts Act and are outside the operation of the Civil Procedure Code.

11. The Board further begs to point out that, whereas in the Sindh Act (section 5, Act XX of 1881), interference is limited to the case of zemindars paying to Government not less than Rs. 300 a year the proposed Madras Bill would extend to every petty shrotriemdar and inamdar in the Presidency.

12. What the Board had in view when in paragraph 27 of the Board's Proceedings dealt with in Government Order, dated 10th July 1893, No. 606, it proposed an Encumbered Estates Act was a very different piece of legislation, viz., India Act IV of 1892, which dealt with encumbered estates in Bengal proper. That Act merely allows the Local Government, on the application of a land-holder, to put his estate under the Court of Wards (section 3), and thereupon it becomes subject, like the estates of minors and females, to the management of the Court under the provisions of Act IX of 1879 (Bengal) which runs in the main on the same lines as Madras Regulation V of 1804, though it is much better drafted. A similar measure is, the Board considers, all that is required for this Presidency. It is not the function of the executive Government to interfere with or adjudicate upon the debts already contracted by land-holders not *primâ facie* disqualified by age, sex or infirmity—that is for the judicial tribunals to determine. All that the executive can equitably do is, on the request of such a land-holder, to take his estate under management (or preferably put it under the body established by law to protect the interests of disqualified land-owners—the Court of Wards) and give him the benefit of efficient administration and of the protection accorded to wards, viz., that while his estate is under management it shall not be sold on account of Government demand though such demand shall have precedence of private debts (sections 14 and 17 of the Court of Wards Regulation) and that during this period the managing authority shall represent his interests. Further, as provided by section 17 of the Court of Wards Regulation, the consent of the managing authority should be required for the repayment of any private debts, leaving doubtful ones to be fought out in the Civil Courts.

13. The Madras Court of Wards Regulation is undoubtedly capable of improvement, and the Board hopes at some not very distant date to be able to submit proposals for its amendment, but it is perfectly workable, and if legislation on the lines of India Act IV of 1892 were adopted, the additional estates which might thus be put under the Court's charge would be efficiently managed.

14. It may be noted that this plan of simply putting the owners of encumbered estates on the same footing as minors or incapacitated wards was proposed for this Presidency so long ago as 1875—*vide* section 4 (*f*) of the draft Court of Wards Bill communicated with Government Order, dated 21st July 1875, No. 39, Legislative, and paragraph 3 of the Select Committee's covering report read in the same order.

15. Apart from the main objections to its principles which have been urged above, the Board has to submit the following remarks on individual sections of the Bill.

Section 3 (1).—There should certainly be some limitation to the first clause so as to make it clear that petty properties will lie outside the scope of the Bill. The public can have no interest in the maintenance of small estates. The Board would limit the application of the Bill to estates with an annual rent value of Rs. 10,000 determined, as was proposed in section 6 of the draft Court of Wards Bill of 1875 above referred to, in the manner prescribed for the purpose of levying land-cess under the Local Boards Act (section 64 of Madras Act V of 1884).

(2) The application should be made through the Collector so as to give him opportunity for expressing his views thereon.

(3) When an estate is under the Court of Wards, application under this section should not be made except by the Court.

Section 8 (3) (*z*).—The Board considers this provision too sweeping and absolute—see remarks in paragraph 8 above.

Section 11 (3).—The Board does not think it necessary to legislate for persons who do not hold direct under Government—see remarks on section 3 above.

Section 15—"Determined the amount . . . justly due to the several claimants."

It should be made clear whether this does or does not involve the extensive equity jurisdiction supposed by the Board in its remarks on the general provisions of the Bill. And the principles which are to guide the Collector in the important and delicate task of adjudication under this section and *section* 16 should be laid down by law and not left to mere adminstrative enactment under section 31.

Section 20.—Considering the finality of the "liquidation scheme" in regard to all claims against the estate, it ought, the Board thinks, to receive the sanction of Government, or an appeal to Government by any person aggrieved by it should be specially provided. Subsequent revision of the liquidation scheme to suit altered circumstances should also be provided for. *Section* 18 appears to cover only revisions before final sanction.

Similarly, an appeal to the Board should be allowed against acts done under *section* 21 and an appeal to Government against proceedings under *section* 22.

Section 27.—When the next heir in the circumstances contemplated by this section is a minor, the jurisdiction of the Court of Wards should be barred so long as the management continues.

Section 29.—As above remarked, considering the final character of the actions of the executive under this Bill, there should at least be an appeal to the highest executive authority—the Government—in matters of such moment as decisions under sections 14, 15, 16, 21 and 22. All the Board's orders in regard to the general administration of the estate including the allowances fixed under section 11 (4) should be final, and an intermediate appeal should be provided from the manager to the Collector.

16. The Board has, through the courtesy of the Honorable Mr. Chentsal Row, C.I.E., obtained a copy of a Bill which he proposed to introduce into the Legislative Council of India and which, with the connected papers including the opinions of a number of representative native gentlemen, is herewith submitted to Government.

That Bill, which goes on the lines advocated by the Board, viz., to allow important embarrassed estates to be placed by Government, at the request of the owner, under the management of the Court of Wards, is, the Board ventures to think, a much more modest, workable and equitable measure than the proposed Government enactment, and if the Government so wishes the Board will be happy to submit remarks and suggestions thereon. It need only say here that the scope of section 9 (3) would have to be restricted for the reasons set forth in paragraph 8 above.

17. The Board's Second Member takes exception to the provision in section 3 of the Government Bill which allows an heir to invoke the interference of Government. He would restrict the power of application for management to the owner of the estate for the time being. The other Members consider that if the main policy and principles of the Government Bill be admitted there is no reason why the heir of an improvident land-holder should not be allowed to invoke its aid.

(A true Copy and Extract.)

Acting Secretary.

To the Secretary to Government, Revenue Department,
with one enclosure.

Exd. S. J. Pereira.

REVENUE DEPARTMENT.

1893.

Board of Revenue

(Land Revenue),

MADRAS.

Printed September 18.

Proceedings, 4th September 1893, *No.* 509.

Submitting to Government Board's remarks on the Encumbered Estates Bill.

BANGALORE,

August 1892.

DEAR SIR,

During the debate on the Bill, which has since become the Government of India Act IV of 1892, I ventured to remark that a similar Bill for Madras would prove highly beneficial to the landed aristocracy of this Province and that I should be glad to introduce it next year after consulting the Madras Government and the people of the Province.

2. On my return from Calcutta, I mentioned this to His Excellency the Governor and he was pleased to encourage me to pursue the enquiry and submit the papers to him for consideration.

3. I accordingly placed myself in communication with most of the representative native gentlemen known to me, and I am glad to say that there is almost a concensus of opinion in favor of the view I have taken.

4. I beg to enclose copies of the letter I addressed to them and of the replies I have received. Some gentlemen have not yet been pleased to answer my reference, but judging from the replies I have received there is very little possibility of much difference of opinion.

5. I also beg to enclose a Draft Bill which I should like to introduce with the permission of Government.

6. The enactment I propose is simply an enabling one. It neither compels Proprietors of encumbered estates to place their estates under Government management, nor does it make it incumbent upon Government to take up their management simply because the owners wish it. It is only when the owner seeks the aid of Government and the Government are satisfied that he deserves the protection sought, that his estate can be taken under management. I am certain that the Bill, if availed of, will save many a Zemindari from ruin, but I am not without doubt that our Zemindars, surrounded as they often are, by uneducated and self-interested men, may not see the utility of the measure and freely come forward to seek the aid of Government. My personal opinion in the matter is that when a Zemindar falls into heavy debts and does not manage his estate in a way to rescue the estate from them, he should be regarded as a disqualified proprietor and his estate compulsorily taken under the management of the Court of Wards; but such a Law, however wholesome it may be, is likely to be opposed as an undue interference with the liberties of the people. We may, therefore, for the present be content with some such Law as that I have ventured to suggest and I hope that the Zemindars may, under the wholesome influence of our Collectors and with the advice of educated men, be induced to avail themselves of the offer the Legislature makes. At the worst, the Bill if it becomes Law can do no harm and will be perfectly innocuous.

7. I am strongly of opinion, and in this view I am supported by most of my native friends, that when the estate is taken under management, the owner should be declared

incompetent to increase the debts without the consent of the Court of Wards. I have given my reasons in full in my speech delivered during the debate, a copy of which accompanies.

8. I am inclined to think that there is nothing to prevent the Bill being introduced in the Local Legislative Council, but in the case of the similar bill which has become Act of IV of 1892, it was held that a Local Legislature could not deal with it. This matter will no doubt be considered by Government.

9. Not being accustomed to draft Bills, I think that the Bill I have drafted is not perfect and may require considerable amendments. If His Excellency the Governor approves of the principle of the Bill, I beg that it may be referred to the Advocate General for such amendment and improvement as it may require.

10. My present state of health is such that I am not certain whether I shall be able to go to Calcutta next year, and I therefore beg leave to suggest that if His Excellency approves of the principle of the Bill, it may be entrusted to the Madras official member who will no doubt be able to handle it more effectively than I can. If I go to Calcutta, I shall with pleasure give him all the help that may lie in my power.

11. Hoping that you will kindly lay the papers before His Excellency the Governor for such consideration as he may be pleased to accord.

I beg to remain,
Dear Sir,
Yours very truly,

To—C. F. MacCartie, Esq.,
Private Secretary to His Excellency
the Governor of Madras.

Mysore Govt. Central Press, Bangalore.—11-6-92.—25.

BILL.

WHEREAS it is expedient to provide for the relief of holders of landed estates involved in debts in the Presidency of Madras, it is hereby enacted as follows:— Preamble.

PRELIMINARY.

I. This Act may be called "The Landholders' Relief Act, 1893" and it shall come into force on the passing thereof.

II. The provisions of this Act shall be put in force only as regards Zemindars, Jahgirdars, Inamdars, and other land-holders who pay an annual Peishcush or permanently fixed quit-rent to Government in respect of their landed estates of Rs. 10,000 or upwards, and who are subject either personally or in respect of their landed estates to debts and liabilities amounting to or exceeding Rs. 50,000.

III. In this Act.—

"Court" means the Court of Wards.

"Zemindar" means proprietor of land who pays a fixed and permanent Revenue of Rs. 10,000 and upwards to Government in respect of his estate.

OF THE APPLICATION AND THE PRELIMINARY ENQUIRY.

IV. At any time after the passing of this Act, any Zemindar may apply in writing to the Governor in Council stating that such Zemindar is subject to debts and liabilities other than debts and liabilities due to Government or that his immovable property is charged with debts and liabilities other than as aforesaid and requesting that the provisions of this Act be applied in his case.

V. When any such application is made by a Zemindar, the Governor in Council shall direct an enquiry to be made by such officer not inferior in rank to a Collector as he thinks fit, into the nature and amount of such debts and liabilities and the sufficiency of the debtor's property whether movable or immovable to discharge the same.

VI. When an enquiry has been directed under Section IV, the applicant shall, within the period to be fixed by the Governor in Council, submit, to the officer appointed to make such enquiry, a statement duly verified by the applicant in the manner prescribed for the verification of plaints and containing a detailed statement of his debts and liabilities and the rents and profits derived from his estates within the three years next preceding the date of his application.

VII. The officer so appointed, after making enquiry, shall submit a report of his proceedings to the Governor in Council. On receipt of such report, the Governor in Council may (a) direct a further enquiry, (b) dismiss the application, or (c) by order published in the Port. St. George Gazette vest the management of the estate in the Court of Wards.

VIII. Such order (hereinafter called the order of management) shall, with the exception of the house he lives in and such other property as may be named by the the Governor in Council, extend to all immovable property of or to which the debtor is on the date of its publication possessed or entitled in his own right or which he is entitled to reclaim or which may be acquired by or devolve on him during the continuance of the management and to all debts and liabilities to which he is subject or which are charged upon the whole or any part of his immovable property on the said date. The management shall be deemed to commence on the date of publication of the said order.

IX. On the publication of the order of management, the following consequences shall ensue:—

1*st*.—The provisions of Regulation VI of 1804 shall apply to the estates comprised in the order of management with the exception of the Sections relating to the guardianship of disqualified proprietors and so far as such provisions are not inconsistent with the express provisions of this Act.

2*ndly*.—So long as the management continues, the debtor shall not be liable to be arrested in execution of decrees of Court of Justice obtained against him.

3*rdly*.—The debtor shall be incompetent (1) to mortgage, charge, lease, or alienate in any manner and to any extent whatsoever any interest, whether present or future, in the property under management or any part thereof; (2) to receive the rents and the profits thereof or to grant valid receipts in respect of such rents and profits; (3) to enter into any contract which may involve him in pecuniary liability.

X. The Manager appointed by the Court of Wards shall, during the management of the property, have all powers with the limitations hereinafter laid down, which the owner thereof might as such have legally

exercised and shall receive and recover all rents and profits due in respect of the property under management.

XI. The Manager appointed by the Court of Wards shall, as soon after the publication of the order of management as possible, take possession of all title-deeds and papers relating to the estates; he may direct the holders of tenures and under-tenures to prove their titles to the same.

XII. The Manager shall have power with the sanction of the Court to devise a suitable establishment to assist him in the management and to appoint the members thereof.

XIII. He may grant leases and farms for periods not exceeding three years on his own responsibility and may lease for longer periods or mortgage portions of the property with the sanction of the Court provided that the period of mortgage or lease does not exceed ten years.

XIV. The Manager shall be competent with the sanction of the Court of Wards to sell a portion of the estate, such sanction being conveyed by a written order setting forth the grounds thereof.

XV. Every such order shall be communicated to the proprietor at least three months before the date fixed for sale and he shall be at liberty to appeal to the Governor in Council within one month from the date of receipt of the order.

XVI. From the sums received or recovered under Section IX, the Manager shall pay:—

1*st*.—The costs of the management including the costs of necessary repairs,

2*ndly*.—Such periodical allowance as may be fixed by Government for the maintenance of the debtor, his family, and those who are legally entitled to, maintenance from his estate,

3*rdly*.—The Government Revenue due in respect of the property under management,

4*thly*.—The rent if any due to the superior holders of such property or portions thereof,

5*thly*.—The costs of such improvements of the said property as he considers necessary and are approved by the Court of Wards. The residue shall be retained for the liquidation of

debts and liabilities in the order of their urgency or in pursuance of the plan (if any) devised by the Court of Wards for the consolidation, conversion and gradual discharge thereof.

XVII. No estate taken under management under the provisions of this Act shall be liable to be sold for arrears of Revenue during the period of management, but the arrears of Revenue shall be the first charge upon the proceeds of such estate, if the estate is sold for any other causes during the management.

XVIII. When all the debts and liabilities referred to in Sections 3, 4 and the interest due thereon have been paid and discharged or if the Governor in Council at any time before any conversion of the debts that may be arranged by the Court of Wards thinks that the provisions of this Act should not continue to be applied to the holder of the said propety or his heir or if at any time an arrangement is made for the satisfaction of the debts and liabilities which is accepted by the creditors and approved by the Court of Wards, such holder or his heir shall be restored to the possession and enjoyment of the property or of such part thereof as has not been sold by the Manager or Court of Wards under the power contained in the foregoing sections, but subject to the leases and mortgages, (if any) granted by the Manager or the Court under the power hereinbefore contained.

MISCELLANEOUS.

XIX. The officer appointed to make an enquiry under Section V shall be deemed a Civil Court for the purposes of the enquiry.

XX. The Manager of the estate shall be deemed to be a public servant and a Civil Court in the exercise of his powers under Section XI.

XXI. In the case of death of the debtor within the period of management leaving a major heir, the management shall continue unaffected by the demise and succession provided that after the death of the proprietor, the Court shall not retain charge on account of any debt or liability which has been declared by a competent Court not to be binding on the representative of such deceased proprietor.

XXII. If in the case mentioned in the preceding section, the heir is a minor, the provisions of Regulation IV of 1804 relating to the guardianship of disqualified proprietors shall apply together with the provisions of this Act.

Bangalore, April 1892.

MY DEAR SIR,

You are probably aware that the Government of India have recently passed an Act No. IV of 1892 authorizing the Bengal Government to place encumbered private estates in charge of the Court of Wards on the application of owners and to allow the Court to retain them under their management till the debts are cleared off. The object of the Bill is to save ancient and deserving zamindaries from dismemberment.

2. During the debate which took place when the above Act was passed, I ventured to express an opinion that a similar Bill for Madras would prove beneficial and prevent the dismemberment of some of our ancient estates which are now heavily involved in debts, and I am anxious to know whether you approve of my idea.

3. It is not at all my wish that all encumbered estates should be placed in charge of Court of Wards whether their owners wish for the same or not, nor do I think it necessary that it should be made incumbent upon Government to take up every estate on the mere application of the owners. While on the one hand it is improper for Government to interfere with the private rights of owners of property except with their consent, it is on the other hand impolitic and destructive of all principles of self reliance to induce people to look up to Government for the management of their property. Nor can the Government successfully undertake the management of the property of every private owner who may wish for the same. The Law I propose to have is designed only to meet hard cases. It is only when the owner of an estate applies for the help of Government, and the Government are satisfied that it is a case deserving of help, that I propose that Government should have power to take it under management. If a zamindar is an unworthy character and has wickedly involved himself in debts and there is no chance of his mending his character, there can be no object in helping him, but there are cases in which good natured men have been the victims of adverse circumstances such as successive bad seasons, family dissensions, evil associations, corrupt subordinates and so forth, and there are also cases in which persons suffer for the sins of their ancestors and it is only such men that I should like to protect and give a chance of maintaining their estates intact.

It is true that private management is always more economical than management by Government, but there are certain advantages which in this country the Government possess and which private managers do not. For instance, if the Government take up the management and wish to raise loans to pay off the existing debts bearing high rates of interest, it would be possible for them to raise loans on a more moderate rate of interest than private individuals can ordinarily do, disputes between the land-lord and tenants can be more easily settled by Government than by private individuals, as the tenants have great confidence in Government, and the Government have always at their disposal the best talent in the country and are able to give the zamindars and raiyats the benefit of their large experience and knowledge in Revenue matters. In short Government management benefits the raiyats as well as zamindars.

If the encumbered estates are to be brought under management, it will be necessary to enact that, during the management of the estates by the Court of Wards, the owners should not be competent to borrow money without the consent of the Court. It was thought in Bengal that rather than declare the owners incompetent to borrow money, it would be better to prevent Courts from enforcing their Decrees on the property without the leave of the Court in the case of debts contracted during the management. The effect of the two methods is nearly the same, but I prefer the former for reasons I have endeavoured to explain in my speech on the Bengal Bill. I request your opinion on this point also. The owners will under any circumstances be granted an allowance suited to their rank and condition in life, which they may spend as they please.

I do not wish to discuss here the large question, whether the preservation of ancient aristocracies is good for the country or not; for, my proposal is based on the assumption that the existence of a well-conducted landed aristocracy in the country is a source of strength, politically, socially, and economically.

I enclose for your information a copy of the Bengal Act referred to above, with the debates in connection therewith and I shall feel much obliged if you will kindly favor me with a reply before the end of June, as, in the event of my proposal meeting with the approval of the gentlemen I am consulting, I have to go up to Government and solicit their opinion and help.

Yours very truly,

Bill introduced in the Council of the Governor General of India for making Laws and Regulations, Reports of Select Committees presented to the Council, and Bills published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill, and Statement of Objects and Reasons accompanying it, are published for general information, by order of His Excellency the Governor General, under the 22nd of the Rules for the Conduct of the Legislative Business of the Council of the Governor General:—

No. 4 OF 1892.

A Bill to amend the Court of Wards Act, 1879 (B. C.).

WHEREAS it is expedient to amend the Court of Wards Act, 1879 (B. C.); It is hereby enacted as follows:—

IX (B. C.) of 1879.

1. This Act shall be read with, and taken as part of, the Court of Wards Act, 1879 (B. C.); and it shall come into force from the date on which it may be published in the Calcutta Gazette with the assent of the Governor General.

IX (B. C.) of 1879. Construction and commencement.

Addition to section 3.

2. In section 3, at the end of the clause defining "estate" shall be added the following words, namely:— "and includes a share in or of an estate."

Addition to section 6.

3. To section 6 the following clause shall be added:—

"(*e*) persons as to whom the Local Government has declared, on their own application, that they are disqualified, and that it is expedient, in the public interest, that their estates should be managed by the Court of Wards."

Addition to section 7.

4. The following proviso shall be added to section 7:—

"Provided that the Court shall not be empowered to take charge of the person of a proprietor disqualified on his own application under clause (*e*) of section 6."

Addition to section 9.

5. At the end of section 9 the following shall be added:—

"And in any case in which the Court has taken charge of the property of a person disqualified from managing his own estates under the provisions of section 6, clause (*e*), it may in its discretion—

(*e*) at any time withdraw from such charge, or

(*f*) retain such charge, notwithstanding any application made for the release of the estate, or the death of the proprietor, until all debts and liabilities incurred by, or due from, the said proprietor, or which are a charge upon the property or any part thereof, together with all interest due thereon, have been discharged;

Provided that, after the death of the proprietor, the Court shall not retain charge on account of any debt or liability not binding on the representative of such deceased proprietor."

Amendment of section 10.

6. In section 10, in the place of the first two clauses shall be inserted the following words, namely:—

"whenever a Civil Court is satisfied that an order should be made under section 7 of Act VIII of 1890, appointing a guardian of the person or property of a minor or both;

"whenever a Civil Court removes a guardian under section 39 of Act VIII of 1890."

Insertion of new sections after section 10.

7. After section 10 shall be inserted the following three sections:—

Court of Wards may take over charge of property from executors.

"10A. The Court of Wards may, at the request and with the consent of any executor or administrator, take charge of so much of the property lately belonging to the deceased person as it may think fit, if any person entitled to an estate included in such property is a person disqualified to manage his own property under section 6."

Court of Wards may be executors.

"10B. The Court of Wards may be appointed the executor or administrator to the estate of a deceased person, if any person entitled to an 'estate' included in such estate of a deceased person is a person disqualified to manage his own property under section 6; and any probate or letters of administration granted to the Court shall be deemed to be granted to the person or persons constituting the Court for the time being."

Court of Wards to be the guardian within sections 215 to 218 of Act X of 1865, and sections 31 to 33 of Act V of 1881.

"10C. Where a ward is sole executor or sole universal or residuary legatee, or would be solely entitled under an intestacy, the Court shall be deemed to be his legal guardian for the purposes of sections 215 to 218 of the Succession Act, X of 1865, and sections 31 to 33 of the Probate and Administration Act, V of 1881."

Amendment of section 11.

8. In section 11, for the words "the Civil Court which would have jurisdiction under Act XL of 1858 may, on the application of the Court of Wards, direct the Court of Wards to retain" there shall be substituted the following words, namely:—"the Court of Wards may retain," and the words "during the continuance of their disqualification or, subject to the provisions of section 12, for so long as such Civil Court may order," shall be omitted.

Amendment of section 12.

9. In section 12, for the words "which before the commencement of this Act was placed," shall be substituted the following, namely:—"which either before or after the commencement of this Act was or is placed," and at the end of the first clause, after the figures 1858, shall be added the following words, namely:—"or under any other enactment for the time being in force."

Addition to section 13.

10. To the end of section 13 shall be added the following words, namely:—"or until all debts and liabilities, together with any interest due thereon, have, under the provisions of section 9, been discharged."

Insertion of new sections after section 13.

11. After section 13 shall be inserted the following two sections:—

"13A. The Court of Wards shall not be required to verify, otherwise than by the signature of the Court, any petition presented by the Court; and if the facts stated in any such petition are not within the personal knowledge of the person, or one or more of the persons constituting the Court for the time being, the petition may be subscribed and verified by any person competent to make the verification."

"13B. The Court of Wards shall not be liable to give security or render accounts to any Civil Court as an executor or administrator, but all such accounts and inventories as may be by law required from an executor or administrator shall be kept in the office of the Court of Wards, and shall be open to inspection by persons interested in such accounts at such times as the Court of Wards may think fit."

Addition to clause 1 of section 23.

12. To clause 1 of section 23, after the word "Court" the following words shall be added, namely:—

"and all estates in respect of which the Court is the executor or administrator shall be exempt from sale for any arrear of revenue."

Repeal of proviso in section 48.

13. In section 48 the proviso in class III shall be omitted.

Amendment of section 49.

14. In section 49, for the words "remains under the charge of the Court with his consent under section 11" shall be substituted the following words, namely:—"is under the charge of the Court under clause (*e*) of section 6, or under the second clause of section 11."

Amendment of section 56.

15. In section 56, instead of the words 'who has consented to leave his property under the charge of the Court of Wards, as provided in the second clause of section 11" shall be substituted the following words, namely:—"whose property is under the charge of the Court under clause (*e*) of section 6, or under the second clause of section 11."

16. To section 60 the following words and paragraph shall be added, namely:—"or to assign over or charge any allowance to be received by him from the Court.

"No property which is or has been under the charge of the Court of Wards shall be liable, either during such period or in the hands of any person other than the ward, for the satisfaction of any debt or decree incurred by or obtained against the ward."

STATEMENT OF OBJECTS AND REASONS.

UNDER the law at present in force, Bengal Act IX of 1879, the Court of Wards can assume the management of the estates of adult male proprietors only in certain specified cases, namely, when they have been adjudged by the ordinary tribunals to be incapable of managing their own affairs, by reason of physical or mental infirmity. But cases have occurred in which proprietors not disqualified in this manner have themselves applied for the protection of the Court, and in which it appeared that their requests should not be refused. The Bill provides a procedure under which the Court of Wards may comply with such applications when Government has decided that the proprietors are disqualified, and that the public interest requires that their property should be placed under State management.

It also extends the definition of estate in section 3 of the Act so as to include a share in an estate. This appears to be in accordance with the law in Madras, the North-Western Provinces and the Punjab, and is intended to remove the inconvenience arising from the interpretation put upon it as excluding from the jurisdiction of the Court of Wards proprietors of shares of estates, however large their property might be.

Some slight formal alterations in the Wards Act have become necessary owing to the repeal of Act XL of 1858, and these are provided in the Bill.

Finally, provision has been made to allow the Court of Wards to take out probate and letters of administration, and to act in certain cases under the Succession Act, X of 1865, and the Probate and Administration Act, V of 1881.

JOHN EDGAR.

S. HARVEY JAMES,

Secretary to the Government of India.

The 19th February, 1892.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

COURT OF WARDS ACT, 1879 (B. C.), AMENDMENT BILL.

The Hon'ble Sir John Edgar introduced the Bill to amend the Court of Wards Act, 1879 (B. C.), and moved that it be referred to a Select Committee consisting of the Hon'ble Sir Philip Hutchins, the Hon'ble Sir Alexander Miller, the Hon'ble Mr. Evans, the Hon'ble Mr. Woodburn, the Hon'ble Dr. Rash Behari Ghose and the Mover, with instructions to report in a week. He said:—

"The most important provisions of the Bill which I am now about to lay before this Council are meant to amend the Bengal Court of Wards Act of 1879 so as to enable the Court of Wards to take over the management of the property of persons not otherwise disqualified upon their own application and with the sanction of the Lieutenant-Governor in each case. Similar provisions were included in a Bill passed by the Council of the Lieutenant-Governor of Bengal in 1877, from which however the sanction of the Governor General was withheld owing to a technical defect. Since that time the desirability of taking some measures to preserve ancient families from ruin and to prevent estates of historical and political importance from being broken up has frequently been brought home to the Government, and in one instance a special Act was passed with the consent of the creditors of a great landholder with a view to rescuing his estate from imminent ruin. In March, 1881, a Bill similar to that part of the present Bill which affects proprietors disqualified on their own application was introduced into the Council of the Lieutenant-Governor of Bengal and reported upon by a Select Committee. But before the measure could become law it was brought to notice that one of its provisions appeared to conflict with the Civil Procedure Code, and that the measure was therefore beyond the competence of the Bengal Council. Consequently it was decided that legislation should be undertaken by the Council of the Governor General.

"The sections of the present Bill, which relate to the new class of disqualified proprietors, are practically the same as those of the Bill which was discussed in the Bengal Council, and they do not materially differ from what is actually the law in other Provinces. They fall far short of the provisions of the law on the same subject which prevails in one part of this Province,—I mean the Chota Nagpore Encumbered Estates Act,—and I do not think it necessary therefore to take up the time of the Council by any discussion of the policy of this part of the measure.

"Another section in the Bill extends the definition of 'estate' in section 3 of Bengal Act IX of 1879 so as to make it cover 'a portion of an estate.' The Bengal Board of Revenue have pointed out that under section 7 of the Act the Court of Wards can only take charge of the property of disqualified proprietors who are either sole proprietors or joint proprietors of an estate, and that this has been held to exclude from the jurisdiction of the Court of Wards proprietors of only shares of estates, however large their entire property may be, while the Court is enabled to, and as a matter of fact does, take charge of properties mainly composed of many shares of estates, provided only that the proprietor has one whole estate, no matter how small. The Board point out that this condition is not required in the cases of properties made over to the Court of Wards by Civil Courts under section 10 of Act IX of 1879 or to the Collector under Act VIII of 1890, and that the restriction does not obtain in certain other Provinces, amongst which the North-Western Provinces may be instanced. They adduce, as an instance of the defective state of the present law, the case of the great Bonalli Raj, with a rent-roll of about 12 lakhs of rupees, seven-sixteenths of which are held by a major proprietor and nine-sixteenths by two minor proprietors. The Court of Wards is unable to take over charge of the latter as the minors do not hold a single

entire estate entered in the revenue-roll. Some of the Members of Council are aware that there has lately been a great lawsuit between the major and minor proprietors of this estate, which, after an expenditure of, it is said, between 8 and 9 lakhs of rupees, was settled by a compromise, part of the terms of which was that the whole estate should be managed by the Collector, who would take over the major's share at his own request and that of the minors under the Court of Wards. This arrangement, however, has been found to be impracticable under the existing state of the law, and if the present state of things continues this great and historic estate will probably be irretrievably ruined.

"There are some other amendments of the Bengal Wards Act contained in the Bill of a purely formal nature. They have been made necessary by the repeal of Act XL of 1858, and require no further explanation here.

"It is proposed to omit the proviso to section 48 of Act IX (B. C.) of 1879 making the consent of the Lieutenant-Governor and the Court of Wards necessary to the expenditure of more than ten per cent. of the previous year's surplus, as it has been found that this proviso only causes unnecessary delay, without providing any additional security for the proper expenditure of the funds.

"The objects of the remaining sections of the Bill are to provide that probate and letters of administration may be taken out by the Court of Wards in that capacity, and the conditions on which such probate and letters of administration may be granted; that the Court of Wards shall be the guardian of a minor when such minor is the sole executor or residuary legatee, &c., and belongs to the class to which the jurisdiction of the Court of Wards extends; that it should have power to take charge of properties of disqualified proprietors at the request of private executors and administrators; that it should be exempt under certain conditions from liability to giving security and rendering accounts to the Civil Court; and that estates administered by the Court of Wards under these sections should be exempt from sale on account of arrears of revenue.

"The discussions which have led to the introduction of these provisions are of old date, having arisen, in the year 1883-84, out of several cases which occurred about that time, the most important of which was one connected with the will of Raja Pramatha Nath Roy Bahadur of Dighaputtia, a very wealthy zamindar, who left four minor sons and by his will made the Court of Wards executor until the coming of age of his eldest son. It was found, however, that the Court of Wards could not take out probate and act as executor, and practically the existence of the will, which the testator meant to strengthen the position of the Court, was found to be an almost insurmountable obstacle to the exercise of the powers vested in the Court by statute. All the Local Governments and Administrations have been consulted on the subject and have reported generally in favour of the alteration in the law which it is now proposed to make, but it has been decided to legislate for the present only for Bengal.

"The Bonalli Raj case, to which I have already referred, shows clearly that it is most desirable that the changes proposed with regard to disqualified proprietors should be made with the least possible delay, and as the most important alterations in the Bengal Act of 1879 have been before the public for a year and have been discussed in the Bengal Council, and as the Bill in its present form has been already published under Rule 22 in the Gazette of India and Calcutta and Vernacular Gazettes, I trust that the Council may be able to dispose of it before the close of the present session, and I shall therefore ask the Council to instruct the Select Committee to report in a week."

The Motion was put and agreed to.

LEGISLATIVE DEPARTMENT.

REPORT OF THE SELECT COMMITTEE.

WE, the undersigned, Members of the Select Committee to which the Bill to amend the Court of Wards Act, 1879 (B. C.), was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

From Secretary to Government, Bengal, No. 852.—L. R., dated 4th March, 1892 [Paper No. 1].

2. In the new clause (*f*) added to section 9 of the Act by section 5 of the Bill we have omitted certain words which seemed to give to persons disqualified under section 6, clause (*e*), power as of right to require the Court to release the estate from its charge.

3. The object of the words which we have inserted in the proviso to the same clause is to make it clear that the question whether any debt or liability of a deceased proprietor is binding on his representative should be decided by a competent Civil Court and not by the Court of Wards.

4. We have omitted sections 7, 11 and 12 of the Bill as introduced because it seems desirable that legislation on the subject of grant of probate and letters of administration to the Court of Wards should be postponed until certain questions relating to the issue of certificates under the Public Demands Recovery Act, 1880 (B. C.), which are now under discussion have been finally settled.

5. For section 8 of the Bill as introduced, which amended section 11 of the Act, we have by section 7 of the amended Bill substituted a new section with the modifications necessary to meet the alteration in the law made by section 2 of the Bill.

6. It seems to us unnecessary to retain section 10 of the Bill as introduced, because in our opinion the addition to section 9 of the Act contained in the new clause (*f*) renders the proposed section superfluous.

7. We have altered the form of the addition to the Act made by section 16 of the Bill as introduced, making its second portion into a new section, numbered 60 A. In this new section we have provided that the property of the ward may at any time be taken in execution under a decree with the permission of the Court of Wards.

8. The Bill was published under Rule 22 of the Rules for the Conduct of Legislative Business as follows:—

In English.

Gazette.	*Date.*
Gazette of India	20th February, 1892.
Calcutta Gazette	24th February, 1892.

In the Vernaculars.

Province.	*Language.*	*Date.*
Bengal	Bengali	1st March, 1892.
	Hindi	1st March, 1892.

9. We do not think that the measure has been so altered as to require re-publication, and we recommend that it be passed as now amended.

JOHN EDGAR.
PHIL. P. HUTCHINS.
ALEX. EDW. MILLER.
G. H. P. EVANS.
J. WOODBURN.
RASHBEHARY GHOSE.

The 10th March 1892.

No. II.

A

BILL AS AMENDED BY THE SELECT COMMITTEE.

TO

Amend the Bengal Court of Wards Act, 1879.

WHEREAS it is expedient to amend the Court of Wards Act, 1879, *passed by the Lieutenant-Governor of Bengal in Council*; It is hereby enacted as follows:—

IX (B. C.) of 1879.

1. (*1*) This Act shall be read with, and taken as part of, *the Act aforesaid*; and

Construction and commencement.

(*2*) *It* shall come into force *at once*.

2. In section 3, at the end of the clause defining "estate" the following words shall be added, namely:—"and includes a share in or of an estate."

Addition to section 3.

3. To section 6 the following clause shall be added, *namely*:—

Addition to section 6.

"(*e*) persons as to whom the Local Government has declared, on their own application, that they are disqualified, and that it is expedient in the public interest that their estates should be managed by the Court."

4. To section 7 the following proviso shall be added, *namely*:—

Addition to section 7.

"Provided that the Court shall not be empowered to take charge of the person of a proprietor disqualified on his own application under clause (*e*) of section 6."

5. At the end of section 9 the following shall be added, *namely*:—

Addition to section 9.

"And in any case in which the Court has taken charge of the property of a person disqualified from managing his own estate under the provisions of section 6, clause (*e*), it may in its discretion—

(*e*) at any time withdraw from such charge, or

(*f*) retain such charge, notwithstanding the death of the proprietor, until all debts and liabilities incurred by, or due from, the said proprietor, or which are a charge upon the property or any part thereof, together with all interest due thereon, have been discharged:

Provided that, after the death of the proprietor, the Court shall not retain charge on account of any debt or liability *which has been declared by a competent Civil Court not to be* binding on the representative of such deceased proprietor."

6. In section 10, in the place of the first two clauses the following shall be inserted, namely:—

Amendment of section 10.

"Whenever a Civil Court is satisfied that an order should be made under section 7 of *the Guardians and Wards* Act, 1890, appointing a guardian of the person or property of a minor or both;

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"whenever a Civil Court removes *under section 39 of the same Act the guardian of a minor*."

7. *For section 11 the following section shall be substituted, namely*:—

Substitution of new section 11.

"*Whenever one or more of the joint proprietors of whose properties the Court has taken charge ceases to be subject to the jurisdiction of the Court, the Court may retain charge of the persons and properties of the still disqualified proprietors during the continuance of their disqualification.*

Procedure when any of joint proprietors ceases to be disqualified.

And in case any person entitled to any property jointly with any disqualified proprietor shall consent thereto, the Court may retain or resume the charge of the property of such proprietor or any part thereof so long as the property of any such disqualified proprietor as aforesaid remains in charge of the Court."

Amendment of section 12.

8. In section 12, for the words "which before the commencement of this Act was placed," the following *words* shall be substituted, namely:—"which either before or after the commencement of this Act was or is placed"; and at the end of the first clause, after the figures 1858, the following words shall be added, namely:— "or under any other enactment for the time being in force."

Repeal of proviso in section 48.

9. In section 48 the proviso in class III *is hereby repealed.*

Amendment of section 49.

10. In section 49 for the words "remains under the charge of the Court with his consent under section 11" the following words shall be substituted, namely:—"is under the charge of the Court under clause (*e*) of section 6, or under the second clause of section 11."

Amendment of section 56.

11. In section 56, instead of the words "who has consented to leave his property under the charge of the Court of Wards, as provided in the second clause of section 11," the following words shall be substituted, namely:—"whose property is under the charge of the Court under clause (*e*) of section 6, or under the second clause of section 11."

Addition to section 60.

12. To section 60 the following words shall be added, namely:—"or to assign over or charge any allowance to be received by him from the Court."

13. *After section 60 the following section shall be inserted, namely:—*

Insertion of new section after section 60.

"*60 A. No property which is or has been under the charge of the Court shall be liable at any time except with the leave of the Court to be taken in execution of a decree made in respect of any contract entered into by the ward without the leave of the Court while his property was under such charge.*"

Exemption of ward's property from execution proceedings in certain cases.

COURT OF WARDS ACT, 1879 (B. C.), AMENDMENT BILL.

The Hon'ble SIR JOHN EDGAR moved that the Report of the Select Committee on the Bill to amend the Court of Wards Act, 1879 (B. C.), be taken into consideration. He said:—

"The reasons for the alterations made by the Committee have been stated in our Report, and I do not think it is necessary for me to take up the time of the Council in recapitulating them. There is, however, one point upon which it may be desirable that I should make some remarks. In the original Bill brought into the Bengal Council as amended by the Select Committee of that Council, there was provision that no decree obtained upon a personal obligation of a ward should be executed against his property in the possession of the Court. The High Court, in a letter addressed to the Government of India in April, 1891, took exception to this provision as interfering with the rights of creditors. The Government of India considered that the precise wording of the draft section seemed possibly to lay it open to the High Court's objection, and, in a letter addressed to the Government of Bengal in September last, it was pointed out that the sole object of the proposed legislation was to protect the family estates, and the Government of Bengal was asked that the draft should be so modified as to make it clear that only contracts made during wardship should be affected. In consequence of this, the Government of Bengal in October last submitted to the Government of India a fresh section following closely the

provisions of the Act in force in the Central Provinces. The Government of India considered that this new section was faulty, inasmuch as that under a strict construction of it the ward would be unable during wardship to take a house or to incur any obligation for the purchase of the necessaries of life, and to meet this objection the section contained in the Bill which was published in the Gazette of India of the 20th ultimo was drafted. The Government of Bengal considered that the new section was inadequate and unsuited for the purpose for which it was intended, and this opinion was shared by some members of the Select Committee including myself. Finally, after much discussion and very careful consideration, we adopted the alterations contained in sections 12 and 13 of the Bill as amended. These sections are considered satisfactory by the Government of Bengal as well as by the Government of India but my Hon'ble friend Mr. P. Chentsal Rao has given notice of an amendment which, I think, is in a great measure open to the objection taken by the Government of India to the section drafted by the Government of Bengal in October last. I have ventured to trouble the Council with these details in order to indicate that the sections, as at present drafted, are the outcome of discussions which have been going on for more than a year, and that they have taken their present form in order to meet objections raised in part by the High Court, in part by the Government of India, and in part by the Government of Bengal. I would, therefore, ask my hon'ble friend not to press the amendment which stands in his name.

"Since the Select Committee's Report was laid before the Council by me the Government of India has received from the High Court a letter on the subject of the Bill as amended by the Select Committee. Copies of this letter have been for some days in the hands of the members of the Council, and the principal questions raised in it, especially that immediately connected with the certificate procedure, will be noticed to-day by members able to speak with more authority than I can. It will be enough for me, therefore, to point out to the Council that the Hon'ble Judges have apparently misunderstood the scope of the proposed alteration in section 3 of the Act by which 'estates' is defined as 'including the share of an estate.' This misconception appears clearly in the remarks made in the concluding portion of paragraph 4 of the Hon'ble Judges' letter regarding the future effect of section 37 of the Bengal Court of Wards Act of 1879, from which it would seem that the Hon'ble Judges are not aware that shares of estates are at present managed by the Court of Wards and its officers, who have for years had an absolute right in the accounts and papers relating to the entire estates, and have exercised with regard to the disclosure of titles the power which the Court considers to be of a most formidable and irregular nature. I have now before me a statement received from the Board of Revenue, from which it appears that the majority of 69 proprietors, who are at present under the Court of Wards, hold shares in revenue-paying estates, in revenue-free estates, in patni holdings and in tenures of various kinds; while some of the most important and extensive properties managed by the Court of Wards are almost wholly composed of such shares. In many of these estates the powers under section 37 have been and are being exercised, and the fact that the Hon'ble Judges are unaware of this shows pretty clearly that the evils anticipated in their letter cannot be so serious as they suppose. If the application of section 37 to estates, shares of which are now managed by the Court of Wards, had given rise to injustice and hardship, surely the High Court would have heard of it. The fact is, as I have explained to the Council when introducing the Bill, that we are not initiating any new principle or making any new departure. We are simply removing an accidental anomaly of an inconvenient character. In illustration of what I mean I may adduce the property of the Srinagar minors, managed by the Court of Wards, which is made up of 15 entire revenue-paying estates paying revenue to Government of over Rs. 10,000, and shares in 49 estates the revenue payable on account of which shares is upwards of a lakh. Again, the property of the Sankerpur wards in Dinajpur is made up of two entire revenue-paying estates paying Rs. 369 to Government, and of shares in five estates the revenue payable on which shares is Rs. 30,940. In one of these properties it will be seen that the revenue payable on the shares is ten times that payable on the entire estates; in the other, the revenue payable on the shares is 100 times that of the entire estates. As the law at present stands, the bulk of the properties are only managed by the Court of Wards owing to the accident of the minors possessing comparatively insignificant entire estates, and I have heard of cases in which the anomaly is even more grotesque.

"As regards the objection raised by the Hon'ble Judges to the Court of Wards undertaking the management of the property of persons holding undivided shares in joint Mitakshara estates, I can assure the Council that the

Government of Bengal never contemplated allowing the Court of Wards to do anything of the kind, and I can scarcely imagine any Court of Wards attempting to do anything so mischievous and preposterous as interfering of their own motion in the affairs of an undivided Mitakshara family. However, I am quite willing to accept either of the alternative amendments which stand in the name of my hon'ble friend Mr. Evans, and should prefer the first as making perfectly clear that no undivided share held in coparcenary by a member of a joint Hindu Mitakshara family could be taken over by the Court of Wards."

The Hon'ble MR. EVANS said that the object of the Bill was a two-fold one: the first one was to bring in a new class of disqualified proprietors as to whom the Government might be of opinion that in the interests of the public their estates should be managed by the Court of Wards. The other object was to enable them to take over shares of estates without requiring that there should be one undivided estate among them. As regarded the first part of the Bill several objections had been taken, the main objection being that it would lead to an extension of the certificate procedure. He could not help feeling that this was a strong objection. In the present state of things the Court of Wards had to take over an estate of a zamindar, whose papers were untrustworthy, and whose raiyats had been able to hold their own. The raiyats had no very strong reputation for veracity where their rents were concerned, and, on the other hand, the zamindar's papers were frequently untrustworthy, and the raiyat's chance of success depended in nine cases out of ten on his being defendant or the zamindar having to prove his case. In many cases there were disputes of old standing as to the length of the pole to be used in measuring the land, and the rate per bigha, and whether the rent was so much per bigha or a consolidated rent for the holding. Disputes constantly existed as to all these and many other points. When the certificate procedure was employed the whole onus of proof was shifted on to the raiyats. This onus they were unable to discharge, and the result was that in many cases the raiyats were completely crushed for the benefit of the minor or other disqualified zamindar. This was an unjust state of things, which was pointed out at the time of the Bengal Tenancy Act. The question was then raised whether it was possible to do away with this certificate procedure in the case of wards' estates, and it was hoped that at least some change would be made in it. There was a good deal said in favour of a summary procedure for the recovery of rents, where disputed questions had all been settled, the rent fixed, and where no dispute remained, except whether the raiyat had paid his rent or not. But there was no defence possible for the use of such a procedure in disputed cases. So great was the force of this objection that it appeared to him and to many members of the Select Committee that they were bound to put into the Bill a proviso to the effect that the certificate procedure should not apply to the new class of estates unless some other means could be found to attain the same object. He was informed that it was the intention of the Government of Be gal to take immediate steps to issue an executive order to put a stop to the use of the procedure in disputed cases pending legislation. Of course, an order could only be a stopgap, but His Honour the Lieutenant-Governor is said not to be in the habit of allowing his orders to be disobeyed, and this would be some substantial guarantee that the mischief would not be allowed to continue. On this understanding, without which he could not consent to the Bill being passed previous to legislation in this direction, he was content that the new estates should be subject to the certificate procedure in the same way as old estates. It was a choice between exempting the new class of estates from this hardship while allowing the old class of estates to suffer from it until the law was changed, or securing to both an *interim* protection pending legislation. It might be said he had exaggerated the evils of the certificate procedure; but it was not so. He knew there were supposed safeguards under the certificate procedure. The managers under the Court of Wards had to send in a notice duly verified that rents were due from certain raiyats. On this the Collector, if he thought fit, issued a certificate. Then the raiyat had a right to make an objection before the Collector. If he could establish the objection, the certificate was set aside. If he failed, he might institute a regular suit in a Civil Court to set aside the certificate. But the fact remained that from first to last the onus lay on the unfortunate raiyat of proving his case, and in ninety-nine cases out of a hundred the burden was too great for him, even when he had a good defence on the merits. MR. EVANS had no wish to say anything against the Court of Wards'

officers. He did not think they acted with intentional harshness or injustice. But the instincts of the Court of Wards were proprietary, and their duty was to manage the estate for the ward. The Collector did not like to see heavy arrears—the manager had to show good results if he could. The result, however, arrived at was injustice to the raiyat, and he thought it was clear the injustice must be put a stop to.

There was another special objection raised by the High Court as to the shares of estates belonging to members of Hindu joint families. This was a valid objection, and he had sought to meet it by the amendment standing in his name which he understood would be accepted by Government. His hon'ble friend Sir John Edgar had said it was never intended that the Court of Wards should do anything so preposterous as to take over such shares. It was therefore clearly not advisable to pass a law which would give them the power of doing so. Another objection was to the further instrusion of executive powers into private affairs. They lived in a very peculiar country—in a country in which a great many Western ideas and Western principles had been brought into operation where they did not work harmoniously. There was a rapid process of disintegration going on, and the land had a tendency to pass into the hands of other classes than its old proprietors. It was considered by the Government that it was a desirable thing to preserve a certain number of large estates and old families, and that it was a matter of policy to do so. In a country like this the influence of large proprietors and large estates was very great. They were generally on the side of law and order, and there was no doubt that they had almost invariably been a help to the Government. This was not a large measure, as he did not think many estates would come under it, because very few proprietors would be willing to be disqualified, and lose all power over their estates and become stipendiaries of the Court of Wards for an indefinite time. Even when a proprietor had made up his mind to take this step, he had to go to the Local Government, who had to consider whether in the public interest the estate should be taken up. It had been said that the words "public interest" was a vague thing; but that could not be helped, and the Government would have to judge of it. On the whole he thought that this power should exist in special cases, having regard to the present state of things among the landholders of Bengal.

One more matter he desired to mention, and that was that in the Bill as it originally stood there was a provision enabling the Court of Wards to act as executors to an estate. This was a feature which, he thought, was exceedingly objectionable. This would have the effect of extending the operations of the Court of Wards Act in directions where it was not desirable to extend it. There would be a strong desire on the part of dying zamindars to place the property in the hands of the executive power instead of appointing private persons executors. There was no sufficient reason for this, and he did not think it desirable so to extend the operations of the Court of Wards.

The Hon'ble SIR PHILIP HUTCHINS said:—

"As to the question whether the Report on this Bill should now be taken into consideration, I see no reason for opposing Sir John Edgar's motion. The Government of India have given the High Court's letter the most careful attention, as they do invariably whenever the Hon'ble Judges favour them with any representation; but the Bill is not really being proceeded with in a hurry; it is, as Their Lordships themselves admit, 'substantially the same measure as that introduced into the Bengal Council last year,' and the main points suggested were fully considered last summer.

"The Hon'ble Court's objections seem to fall under three heads. The first relates to the expansion of the definition of an estate so as to include a share in an estate. By 'estate' we mean simply a revenue-unit. We had no intention of treating a Hindu coparcener's undivided share as a separate revenue-unit, and I think this objection will be fully met by the amendment proposed by the Hon'ble Mr. Evans.

"The next objection has reference to the certificate system. From the first the Government of India have shared and supported the view of the High Court that certificates ought not to be issued in respect of any demand which is doubtful or the subject of a *bonâ fide* dispute. Their Lordships have quoted a portion of the third paragraph of our letter as leading them to believe that the amendment of the law relating to certificates would be undertaken before this Bill was proceeded with; but, if the whole paragraph is taken together, I submit that it hardly conveys any such assurance. The whole paragraph stands as follows:—

'There is considerable force in the objections taken to the extension of the certificate procedure. It may, however, be observed that, if the general law as to the power of the Collector to make certificates regarding arrears of rent in wards' estates is amended, the amendment will of course extend to the estates now in question; and the Governor General in Council hopes that the question will be settled before this Bill becomes law.'

"Here the High Court's quotation stops, but we went on to say that 'meanwhile'—that is to say, until the law can be amended—

'Meanwhile, His Honour the Lieutenant-Governor will be asked to consider whether it may not be possible to restrict by executive order the making of certificates, or, if that is not possible, whether a clause should not be added to the Bill providing that that procedure shall not extend to the estates contemplated by the Bill.'

"I believe His Honour is now prepared to give an undertaking which will satisfy the Council that the certificate system will not be abused and that every effort will be made to put it on a better legal basis as soon as possible.

"The third and last objection is one of which the Government of India cannot admit the force, and which indeed is contrary to their recognized policy. It is asserted that the State has no concern with the affairs of any of its private subjects, and that its interference for the purpose of saving private estates is 'a retrogade step, substituting, as it does, for the ordinary law applied in Courts of Justice what is really a special intervention of the executive at its own discretion.' Their Lordships have not explained how the ordinary law as applied by the Courts can operate to protect an encumbered estate from ruin, and, if their view is to be accepted and State intervention excluded, all our enquiries into the intricate subject of agricultural indebtedness are merely causing vain trouble and expense. But the Government of India take a much wider view of their duties. Whether we have regard to the raiyats of the Dekkhan, the peasant-proprietors of the Punjab, of the great zamindars of the Lower Provinces, it appears to us that the manner in which their estates are passing into the hands of money-lenders and other non-agriculturists involves a grave political danger; and that we are not only justified in taking, but under an obligation to take, such reasonable measures as may appear necessary to secure ancient proprietary families from being ruined by the folly or misfortunes of a single representative. The law of most Provinces already empowers the Local Government, with the proprietor's consent, to place an embarrassed estate under the Court of Wards with a view to rescue it from the clutches of speculative money-lenders. As long ago as 1873 a law to this effect was enacted for the North-Western Provinces, and the Government of India are assured that it has worked admirably. It is time now that it should be extended to Bengal, as it will be if this Bill becomes law; but in this Bill we have introduced a safeguard against unnecessary interference, which does not exist in other Provinces, by providing that no proprietor shall be declared disqualified, even on his own application, unless the Lieutenant-Governor is satisfied that the public interests require him to intervene. No doubt that is a somewhat vague expression, but the very nature of the subject makes it imperative to give the Head of the Local Government a large discretion."

The Hon'ble Sir Alexander Miller said:—

"I have so little to add to what has been already said, that I do not think I ought to detain the Council long; but, considering the character of the criticisms of the High Court and the assurance which was given to them, and which no doubt has been fully carried out, that every member of this Council would consider and carefully weigh their representations, I do not think I ought to let this Bill pass without a few observations in reference to their letter.

"There are only two or three points in regard to which I think it necessary to say anything. First, as regards the certificate procedure. Now, I confess I personally thoroughly agree with the view of the High Court, and I think this is also the view of the Government of India, that the certificate procedure, although suitable for the recovery of Government revenue, which is a fixed and definite claim, and as to the amount of which there can be no question, the only point arising being as to whether it has been actually paid or not, is very unfit for being used as a lever for determining cases between landlord and tenant—cases which in every country are frequently of a very complicated nature, and which in this country are, as far as I can understand, not only more complicated but more difficult of determination than in ordinary countries, because the tenants seem to be even more improvident than those with whom I have been accustomed to deal, though I should have thought that their improvidence could not have been exceeded had I not heard the account which my hon'ble friend Mr. Evans has given us of the tenantry of Bengal.

"I should certainly, if the Government of India were not pledged to take up at the earliest possible convenient moment the whole question of the applicability of the certificate procedure to questions between landlord and tenant, have thought it necessary to move for some clauses which would have excluded that procedure from the new cases about to be brought under the Court of Wards; but, as I understand, the Government are not only to look into the question at the earliest possible moment, but to legislate so as to put this matter on a fair and satisfactory footing, and I do not think that the extension for a short time of this procedure to the few extra estates which may be brought under the Court in the interval is of sufficient importance to delay the passing of an Act which, on the whole, I think a very desirable and beneficial one.

"The next point taken up by the High Court is the general objection to taking out of the hands of a man not disqualified by law the conduct of his own property. I can only say that the objection is one which has not, as far as I know, prevailed in any civilized country where the matter has been brought forward. The Scotch law is extremely analogous to that which we are now proposing to introduce. It is a little more against the landowner, because here we propose that the consent of the disqualified man should be required, whereas by the Scotch law of *prodigus* a man, otherwise *sui juris*, may under certain circumstances be deprived against his will of the right of managing his property.

"The laws both in France and Germany have always recognised the right of the State to prevent a man from dissipating his property, and the power of a Conseil de famille was until the introduction of the Code Napoleon very much greater in that respect than anything now proposed, and within the last few years the lunacy law in England has been so far modified as to enable the Master in Lunacy to declare a man unfit to manage his property without declaring him a lunatic or taking charge of his person. Under these circumstances, I cannot see that there can be any objection in principle to our extending the protection of the Court of Wards to those persons who are practically in the position of the class which I have last named, that is to say, persons who are in the public interest not to be trusted to deal with their own property, although they cannot be said to be lunatics or unable to take care of themselves.

"The last objection taken by the High Court was to the clause which proposed to invalidate the contracts of persons whose property is under the charge of the Court. The clause is only of importance when you come to deal with persons who are in the new class, because, except perhaps a few unmarried women, all the other persons affected are already incapable of entering into valid contracts; but the new class consists of persons who are *sui juris* in the eye of the law, and are not disqualified except under the particular provisions of this Act. The terms of the clause have been the subject of much discussion partly by the High Court, partly by the Government of Bengal, partly by the Government of India now for several months, and after having assumed various forms they were settled, not exactly unanimously, but nearly unanimously, by the Select Committee in the form which appears in the Bill. They are not exactly in the form which personally I should like, but I am willing to stand by the form which they have assumed. I should

object most strongly to any such alteration as that which is proposed by my hon'ble friend Mr. Chentsal Rao which would go to the extent of depriving these persons of any real power of contracting at all. I know what his proposition is—that so far as the question of necessaries is concerned they would be in the same position as a minor; but this is a question of contract, whereas the law as to necessaries rests on a totally different footing, quite independent of contract; and I doubt very much whether a man who is not a minor—a man who is *sui juris*, and to whom goods had been delivered at his request—would be subject to an action for necessaries. If he is to be unable to enter into any contract which might involve pecuniary liabilty, the result would be that no one who supplies him would be able to recover the money unless the man himself chose afterwards voluntarily to pay it. That would have two results: first of all, a number of people who might think it very desirable to put their estates under the Court of Wards would very probably hesitate to do so if they found themselves reduced to absolute incapacity in the eye of the law; and, secondly, if it was once known that a man was a ward of this class, no man in his senses would trust him with a loaf of bread or a bottle of wine unless he paid the money down for it. I do not think it desirable that these persons should be placed in this position. The clause as now framed does two things. It provides, in the first place, that no such ward shall be competent to create any charge, that is to say, to mortgage or pledge his estate without the consent of the Court; and, secondly, that, if he has entered into any contract involving him in pecuniary liability, the consent of the Court shall be required before execution can be taken out against his estate in fulfilment of that contract.

"That would enable the creditor to recover from the man himself if he had anything to pay with. He would be able to get payment by threatening execution if he was not paid voluntarily, and I see no reason whatever why this course should not be open to the creditors. I think that it is entirely for the interests of the country that old estates should not be dissipated, and that as far as possible the agricultural populations should be retained in possession of the land; but it is not for the public interest that men should be encouraged to defraud their creditors, and I therefore hope that this Council will not consent to any alteration of the last two clauses as settled by the Select Committee."

His Honour THE LIEUTENANT-GOVERNOR said:—

"What has been said by my hon'ble friends Mr. Evans and Sir Philip Hutchins on two of the main subjects under discussion,—the applicability of the Court of Wards' action to an undivided share in an estate, and on the general principle of enabling a proprietor to declare himself disqualified to manage his estate and to put himself under the protection of the Court,—has been so complete in itself and so entirely agrees with my views that it is not necessary for me to add anything on that subject. I turn therefore at once, with pleasure, to answer the challenge made by my hon'ble friend Mr. Evans in this respect, that he practically asked if the Bengal Government would pledge itself that executive orders should issue preventing the use of the Certificate Act in certain classes of cases, and that the earliest possible opportunity should be taken of amending the Certificate Act in the same direction. I answer that challenge with pleasure, and I undertake that what he desires and what he has so justly stated shall be done. I fully agree with what has been said by my hon'ble friend Sir Philip Hutchins that when the Court of Wards first takes over the estate of a deceased proprietor it generally finds that estate in a condition of great confusion; the accounts and the rent rolls in an extremely inaccurate and untrustworthy state; and it is a hard thing for the raiyat that the manager of an estate under the Court of Wards should have legal power given him to act upon these inaccurate and untrustworthy *jamabandis* and other documents as if they were thoroughly reliable, and should issue a process against the raiyat for the rent which these papers show to be due, and leave the onus of proving that the rent is not due

on the raiyat. I am very glad that my hon'ble friend Mr. Evans in stating the case protected himself from making, and the officers of this Government from having made, against them a charge which might possibly have been based on what has been written on this subject. My hon'ble friend Mr. Evans has very justly said that, although the legal position of the raiyat is a very unfair one, he had no doubt that the managers of the estates, and the Rent Courts before which the requisitions of the managers would come, would do their best to do justice, but he thought that they would be to a certain extent not honest in their desire to show a clean rent-sheet and that they would be anxious to prove themselves too good executive officers in the matter of collecting rents. He has, I think, quite accurately stated the fact that the Rent Courts before which these requisitions come would, as a rule, be quite as careful to ensure that a decree was not made against the raiyat on insufficient grounds. I think he has to some slight degree exaggerated the idea of how the desire to show a clean rent-sheet might operate in the minds of the managers of estates. If my hon'ble friend had had the duty imposed upon him, as I have had, of studying the Board of Revenue's Annual Report on the Court of Wards' estates, and he had seen the extremely large amount of arrears and the inefficiency of the managers in the matter of collection, I think he would have been less disposed to come to the conclusion that these officers were actuated merely by the desire to show their executive efficiency. As a matter of fact, the Annual Report shows that in a great many of the Wards' estates the arrears are very large and the collection very slow and behind hand, and I shall take note of what fell from my hon'ble friend Mr. Evans and shall have great pleasure in issuing the next resolution on the next report to bear in mind the suggestion he has made that possibly one cause of the inefficiency of these managers may be their anxiety not to do injustice in the case of those arrears which exist.

"Passing on from that point, I fully agree that a summary process is not a suitable process in a case where any dispute exists as to whether the amount is due or not, and the order which I propose to issue is that as soon as an estate comes before the Court the first duty of the Court will be to comply with the provisions of section 101 and the following sections of the Act to make a settlement of the estate, to have a field measurement made and a complete record-of-rights. Until that record-of-rights is made and every dispute between land-lord and raiyat is decided and a clear sheet exists showing exactly what each man holds, what his tenure is, and what rent is due from him—till then I think any form of summary procedure is not justifiable. Under orders which will emanate from this Government no such process will issue from the time when such order is made public, and I will take the earliest possible steps to amend the particular law in this direction.

"I think therefore that my hon'ble friend Mr. Evans is well advised in not pushing his objection to the certificate procedure. He has rightly said that if he had done that he would only have saved some very few estates from the operation of this clause, and nothing could have been done to interfere with the operation of the Act in regard to all the other estates. After the pledge which I have given has been carried out the procedure will apply to the whole of the estates under the Court of Wards.

"But a further vista opens out to us in connection with this matter, and it is one of considerable importance, and I am glad to have this opportunity of explaining it. I came to this Council having no doubt about it, but some slight doubt has been occasioned to me by the remarks of my hon'ble friend Sir Alexander Miller, who has expressed an opinion that a summary procedure would in no case be suitable in the adjustment of disputes between land-lord and tenant. I trust that when my hon'ble friend Sir Alexander Miller has had an opportunity of seeing the care and accuracy with which the record-of-rights under the Tenancy Act is made, how clearly every circumstance of the tenure is defined, what care is taken to make a complete and accurate settlement, to define the amount of rent due, and as to every possible incident connected with the tenure, I think, when the hon'ble the Legal Member has satisfied himself on these subjects, he will probably agree that it is quite as just that there should be a summary procedure for the recovery of rent as to have a summary pro-

cedure for the recovery of revenue from estates borne on the Government rent-roll. The Council are aware that we are engaged now not merely in a cadastral survey of those estates, but in an operation which has given rise to great agitation and anxiety on the part of many of our important landholders and many of the most loyal subjects of the Government, and I think it will be some satisfaction to them and tend to remove their anxiety if they have reason to hope that, as soon as this record-of-rights which will be formed under the Bengal Tenancy Act, with a more summary procedure for the recovery of rent than now exists, shall be bestowed upon them, they will practically obtain the same benefits in regard to the recovery of rents from their raiyats as the Government officers have with regard to the recovery of rents in estates which belong to Government or in estates which are managed by the Court of Wards. There is a provision now in the Tenancy Act under which rent-suits below Rs. 50 may be tried summarily like a Small Cause Court suit, but this provision had not been put into force hitherto because rent-suits generally have turned not merely on the question whether the rent had been paid or not, but on the question how much the rent really is, or whether rent is due at all. When once disputes of this sort have been cleared away it seems probable that the provision referred to may be utilized or even that some simpler procedure may be invented. I propose that this subject should be taken in hand by the Bengal Government at the earliest opportunity, and, if I get the sanction of this Council, I trust I may be able to introduce a Bill of this kind which will extend its benefits, which, I think, are perfectly reasonable, to the great and small landholders in the districts in which the cadastral survey is carried out. In that way we shall do a great deal to remove the suspense and anxiety which has arisen with regard to the trouble and expenditure which the survey will bring upon them."

The Motion was put and agreed to.

The Hon'ble MR. EVANS moved the following amendment, namely :—

That after the word "and includes a share in or of an estate" proposed to be added to section 3 of the Act by section 2 of the Bill as amended, the words "other than an undivided share held in coparcenery as the property of a Hindu joint family governed by the *Mitakshara* or *Mithila* law" be inserted.

The Motion was put and agreed to.

The Hon'ble P. CHENTSAL RAO moved that for section 13 of the Bill, as amended, the following section be substituted, namely :—

13. "For section 60 the following section shall be substituted, namely:—

Substitution of new section for section 60.

60. "No ward shall be competent, without the leave of the Court, to transfer or create any charge on, or interest in, his property or any part thereof or to enter into any contract which may involve him in pecuniary liability."

Disability of ward to contract, &c.

He said :—

"The principle of the Bill, in so far as it is designed to preserve ancient families from ruin, and to prevent their estates from being broken up, has my hearty sympathy, and I only regret that the Bill is limited in its operation to Bengal. In Madras there are some very ancient zamindaris which are heavily involved in debt and are on the brink of destruction. They richly deserve the protection and benefit which the Bill is calculated to afford, and I hope it may be in my power to introduce, with your Lordship's permission, a similar Bill for Madras, some time next year, after consulting the Madras Government and the chief zamindars of the Province.

"Coming to the details of the Bill under consideration, section 13 seems to me to be inadequate for the purposes for which it is intended. I presume that the object of the section is to prevent creditors from advancing loans to the wards without the leave of the Court, so that the wards may be weaned of

their pernicious habits of constantly contracting debts, and that it may be possible for the Courts to restore the estates free from encumbrances and so give them a fresh start. If so, I do not see how the section can effectually attain the object. The section does not declare contracts entered into by the wards without the permission of the Court void, but simply lays down that the estate shall not be, without leave of the Court, answerable for debts incurred during the period of management, the personal liability of the debtor remaining unaltered. This provision may deter some prudent and honest creditors from advancing loans without the permission of the Court, but I can speak from experience that there are everywhere a considerable number of speculators who are ever ready to advance loans on mere personal security provided a high rate of interest is promised. They freely calculate upon the weakness of human nature and reckon upon the debtors voluntarily selling or mortgaging their property, when they are in a position to do so, to liquidate the debts and avoid incarceration in Jail. The effect of section 13 will thus be not to prevent the accumulation of debts during the period of management but to create debts far more serious and insidious in their consequences than ordinary debts contracted in the absence of any prohibition; for loans under ordinary circumstances on the security of the estates bear a moderate rate of interest, whereas loans on mere personal security can only be had at ruinous rates. The only effective way of preventing accumulation of debts during the management and forcing habits of frugality on the proprietors is, not by enacting that the property shall not be answerable for such debts without the leave of the Court of Wards, but by declaring all contracts entered into without the leave of the Court absolutely void, so that creditors may under no circumstances be tempted to advance loans without the leave of the Court. It may be said that such a provision would be a violent intrusion upon the natural rights of owners of private property, but the objection will vanish when it is remembered that the prohibition applies only to persons already legally incompetent to enter into contracts, or to persons who have with their eyes open consented to the properties being managed by the Court of Wards in consequence of their own inaptitude and with the full knowledge that their rights will be abridged for their own benefit during the management. I may also remark that any declaration that the wards shall not be competent to enter into contracts cannot in the least affect ordinary engagements made by them for necessaries of life, for all such engagements fall within section 68 of the Contract Act, IX of 1872, which clearly says that, if a person incapable of entering into a contract under any law for the time being to which he is subject (*vide* section 11) is supplied by another person with necessaries suited to his condition in life, the latter person is entitled to be reimbursed from the property of such incapable person. This seems to me to be quite sufficient for all ordinary requirements, and in extraordinary cases there is nothing to prevent the ward's obtaining the previous consent of the Court.

'For the foregoing reasons I beg to propose to substitute the following section for sections 12 and 13 in the Bill :—

Substitution of new section for section 60.

'13. For section 60 the following section shall be substituted, namely :—

"60. No ward shall be competent, without the leave of the Court, to transfer or create any charge on, or interest in, his property or any part thereof, or to enter into any contract which may involve him in pecuniary liability."

Disability of ward to contract, &c.

"I observe that a similar section was suggested by the Bengal Government, and it is not clear from the papers circulated why the suggestion was not adopted. I applied for the correspondence that passed on the subject and referred to by the Hon'ble Mover in his first speech, but I was informed that the correspondence did not take place in the Legislative Department and that there was no likelihood of its being printed and circulated among the Members.

"It is my humble opinion that a clear prohibition against contracting debts is much more beneficial even to the general public than an indirect and indefinite prohibition such as that conveyed by section 13. It would at once save the creditors from throwing away their money and entering into litigation, whereas, if section 13

stands as it is, there is every chance of their being tempted to advance money in the hope of obtaining the consent of the Court of Wards for the execution of the decrees they may obtain, which hope may after all prove fruitless. Moreover, the principle of making the property answerable for debts, not upon the nature of the debt or purposes for which it was made, but upon the unrestricted discretion of a Revenue-authority to be exercised even after the latter has ceased to have anything to do with its management, appears to me to be novel and unprecedented, and is in my opinion a greater violation of the rights of owners of property than that implied in the declaration that all contracts entered into during the period of management without the consent of the Court shall be void. If I have correctly gauged native character, I may say that all legislation of an indefinite character, though honestly meant for the protection and safety of the people, is always viewed by the public with a vague sense of distrust and suspicion, the possibility of which it should be our aim to prevent.

"My Lord, I need hardly assure your Lordship that I have ventured this amendment and these remarks not in a spirit of hostility to the Bill but because I sympathise with the main object of the Bill, and wish to make it as effective as possible for the attainment of its avowed object."

The Hon'ble SIR PHILIP HUTCHINS said:—

"It has already been stated that the precise form which this particular provision should take was very fully discussed by the Select Committee, and it was also considered by Your Excellency personally and your Council when the Bill was before the Bengal Council. We all thought that it would not be right entirely to disable the ward from contracting, and the section as framed seems to give creditors ample notice that they have practically nothing but the ward's current allowance or goods to look to. I am not at all sure that section 68 of the Contract Act would have any effect in the case of a ward with a sufficient allowance, and, even if it does apply, I do not see why the ward should be prevented from obtaining something beyond bare necessaries. It may be noticed that the Hon'ble Judges of the High Court have taken no objection to this part of the Bill."

His Honour THE LIEUTENANT-GOVERNOR said:—

"I think it right to say, with regard to this section, that as far as my private judgment is concerned my views agree with those expressed by Mr. Chentsal Rao. Personally I should have preferred the section extracted from the Central Provinces Act and adopted by the Bengal Government, but it was discussed by Your Excellency's Council very fully; the arguments which Sir Philip Hutchins has repeated in this Council were brought forward and were considered to preponderate; and I felt bound to bow to the authority of that decision. I feel satisfied that the clause as now drafted will meet all the practical ends which I have aimed at. It is possible that there may be here and there a case in which it does not meet them, but the hardship which might thus be caused would be very unlikely to occur, and it would hardly be necessary therefore for us to provide for it.

"Under these circumstances I am prepared to waive my objection and to accept the section as drafted by the Select Committee."

The Motion was put and negatived.

The Hon'ble SIR JOHN EDGAR moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

LEGISLATIVE DEPARTMENT.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 25th March, 1892, and is hereby promulgated for general information:—

ACT NO. IV OF 1892.

AN ACT TO AMEND THE BENGAL COURT OF WARDS ACT, 1879.

C) 9. WHEREAS it is expedient to amend the Court of Wards Act, 1879, passed by the Lieutenant-Governor of Bengal in Council; It is hereby enacted as follows:—

1. (*1*) This Act shall be read with, and taken as part of, the Act aforesaid; and

Construction and commencement.

(*2*) It shall come into force at once.

2. In section 3, at the end of the clause defining "estate" the following words shall be added, namely:—"and includes a share in or of an estate other than an undivided share held in co-percenary as the property of a Hindu joint family governed by the *Mitakshara* or *Mithila* law."

Addition to section 3.

3. To section 6 the following clause shall be added, namely:—

Addition to section 6.

"(*e*) persons as to whom the Local Government has declared, on their own application, that they are disqualified, and that it is expedient in the public interest that their estates should be managed by the Court."

4. To section 7 the following proviso shall be added, namely:—

Addition to section 7.

"Provided that the Court shall not be empowered to take charge of the person of a proprietor disqualified on his own application under clause (*e*) of section 6."

5. At the end of section 9 the following shall be added, namely:—

Addition to section 9.

"And in any case in which the Court has taken charge of the property of a person disqualified from managing his own estate under the provisions of section 6, clause (*e*), it may in its discretion—

(*e*) at any time withdraw from such charge, or

(*f*) retain such charge, notwithstanding the death of the proprietor, until all debts and liabilities incurred by, or due from, the said proprietor, or which are a charge upon the property or any part thereof, together with all interest due thereon, have been discharged:

Provided that, after the death of the proprietor, the Court shall not retain charge on account of any debt or liability which has been declared by a competent Civil Court not to be binding on the representative of such deceased proprietor."

6. In section 10, in the place of the first two clauses the following shall be inserted, namely:—

Amendment of section 10.

"Whenever a Civil Court is satisfied that an order should be made under section 7 of the Guardians and Wards Act, 1890, appointing a guardian of the person or property of a minor or both; VIII of 1890.

"whenever a Civil Court removes under section 39 of the same Act the guardian of a minor."

7. For section 11 the following section shall be substituted, namely:—

Substitution of new section 11.

"Whenever one or more of the joint proprietors of whose properties the Court has taken charge ceases to be subject to the jurisdiction of the Court, the Court may retain charge of the persons and properties of the still disqualified proprietors during the continuance of their disqualification.

Procedure when any of joint proprietors ceases to be disqualified.

"And in case any person entitled to any property jointly with any disqualified proprietor shall consent thereto, the Court may retain or resume the charge of the property of such proprietor or any part thereof so long as the property of any such disqualified proprietor as aforesaid remains in charge of the Court."

8. In section 12, for the words "which before the commencement of this Act was placed," the following words shall be substituted, namely:—"which either before or after the commencement of this Act was or is placed;" and at the end of the first clause, after the figures 1858, the following words shall be added, namely:—"or under any other enactment for the time being in force."

Amendment of section 12.

9. In section 48 the proviso in class III is hereby repealed.

Repeal of proviso in section 48.

10. In section 49 for the words "remains under the charge of the Court with his consent under section 11" the following words shall be substituted, namely:—"is under the charge of the Court under clause (*e*) of section 6, or under the second clause of section 11."

Amendment of section 49.

11. In section 56, instead of the words "who has consented to leave his property under the charge of the Court of Wards, as provided in the second clause of section 11," the following words shall be substituted, namely:—"whose property is under the charge of the Court under clause (*e*) of section 6, or under the second clause of section 11."

Amendment of section 56.

12. To section 60 the following words shall be added, namely:—"or to assign over or charge any allowance to be received by him from the Court."

Addition to section 60.

13. After section 60 the following section shall be inserted, namely:—

Insertion of new section after section 60.

"60 A. No property which is or has been under the charge of the Court shall be liable at any time, except with the leave of the Court, to be taken in execution of a decree made in respect of any contract entered into by the ward without the leave of the Court while his property was under such charge."

Exemption of ward's property from execution proceedings in certain cases.

S. HARVEY JAMES,
Secretary to the Government of India.

RUGBY HALL,
Bangalore, May 27th 1892.

My Dear Sir,

I had no time, ere this, to look over the papers you sent me with your letter of 4th instant, in regard to the proposed legislation, with a view to save ancient and deserving Zemindaris in the Madras Presidency from dismemberment.

2. I quite approve of the idea, to pass an enactment similar to the Bengal Court of Wards Amendment Act, IV of 1892.

3. The Zemindars generally are noted for their improvidence and want of thrift. They have, in the majority of cases, completely mismanaged their estates, and, as Mr. Thackeray very forcibly remarks, the revenue is generally expended "to feed the idle and unproductive footmen, peons, dancing girls and Brahmins"—and it is wasted "in silly and ostentatious display, in tasteless and debasing luxury, in superstitious benefactions and in vice."

4. I am one of those that consider the creation of a landed aristocracy in India a mistake, as it is a notorious fact that the introduction of a class of intermediate proprietors between the Government and the cultivators of the soil has, in a degree, annihilated the rights of the raiyats, has caused vexatious and ruinous litigation to both parties, divested the producers of agricultural wealth of their rights and deprived them for ever of the power of accumulation. But I admit, at the same time, that, where such Zemindaris are encumbered and the owners or proprietors find it difficult to manage their estates and voluntarily apply to Government for interference and help, it is absolutely necessary, both in the interests of the Zemindars and of the raiyats, that Government should assume management of the estates for a stated period and thereby prevent the estates from passing into the hands of speculators, who may belong to the very dregs and refuse of society, unacquainted with the habits, the feelings, the wants and even the language of the cultivators.

5. I think that, even in cases in which the Zemindar does not apply, the Government ought to inferfere by assuming temporary management of the estate, when they are satisfied that the estate is grossly mismanaged and the raiyats are oppressed and are not in full possession of their rights and privileges and that a continuance of the mismanagement of the Zemindari will tend to subvert the rights of the cultivators, which it is the duty of the law to protect. It is the bounden duty of Government to interfere in all such cases in the exercise of their paramount power of protecting the subjects.

6. Section 60 A suffciently provides against improper alienations made by a Zemindar while his estate is under the management of a Court of Wards. Execution against the estate will not be allowed except with the leave of the Court. Such leave will not be granted unless the debt

decreed is considered by the Court of Wards to have been contracted by the Ward *bonâ fide* and for a real necessity while the property was under the charge of the Court. But it is inexpedient and against sound policy to declare that the owner of a Zemindari is utterly incompetent to borrow money without the consent of the Court of Wards. The allowance granted to the owner may, owing to unforeseen circumstances or other calamities that befall him, be found to be insufficient, when he may be under the unavoidable necessity of borrowing money. There may be no time to obtain the consent of the Court of Wards. The emergency may be such as to compel the Zemindar to borrow at once, and it would be cruel, if not unjust, to fetter him with any such restriction as that proposed by you.

Yours very sincerely,

T. R. A. THUMBOO CHETTY.

To—The Hon'ble P. Chentsal Rao Pantulugaru, C. I. E.,

TRIVANDRUM,

8*th May* 1892.

MY DEAR SIR,

I received your letter of the 4th idem requesting my opinion on the proposed legislation for the protection of encumbered estates in the Madras Presidency.

There can be no two opinions among those who have had special opportunities of becoming themselves acquainted with the affairs of our ancient Zemindars, as to the desirability, nay, the absolute necessity, of extending to Madras estates, the protection which Act IV of 1892 (recently passed by the Legislative Council of India) has conferred on estates in Bengal. We have in the present deplorable condition of the Calastry Zemindari, incontrovertible proof of the existence of the evil, to check which, in Bengal, the said enactment was recently passed. If we had in Madras a statute similar to Act IV of 1892, when Mr. Venkasami Rao assumed the management of Calastry Zemindari and if he had received his appointment as Dewan from the Court of Wards, the Zemindari may have, by this time, paid off all its debts and entered upon a career of financial prosperity. That the managemont of an estate by the Court of Wards is more costly than the management by the proprietor himself is only a plausible truth. The salaries paid by the Court to the managing agency may be more liberal than those paid by the proprietor; but there will be considerable saving in other expenditure which the proprietor would often find it difficult to control effectually. The allotments made by the Court for the maintenance of various members and for the performance of ceremonies, &c., will be accepted without a murmur, while those made by the Zemindar under the best and most disinterested advice will be contested to the bitter end. In the course of my judicial experience in four districts of the Madras Presidency—Nellore, Madura, Godaveri, and Chengelput— I invariably noticed that the estates which had

passed through the hands of the Court of Wards had comparatively reliable records and accounts; and that the estate was in every instance handed over to the proprietor with a respectable amount to his credit. The importance of having reliable accounts and records in the general interests of the public and in the special interests of the administration of justice, cannot be over-estimated. The late Raja of Pittapur in Godaveri, who was for many years before his death, deeply involved in debt, once remarked to a friend that the salvation of his estate lay in his early death and the long minority of his successor—circumstances which have come to pass. It is, I think, the duty of the Government to enable encumbered Zemindars to seek the aid of the Court of Wards without wishing ill of themselves.

If the assistance to be rendered by the Court of Wards is not to be illusory, the proprietors must, as proposed by you, be deprived of the power of contracting loans without the leave of the Court, during the time the estate is under its management. Act IV of 1892 contemplates the possibility of the Court of Wards permitting execution of decrees on the estate at their discretion. This possibility--I would call it, a glimpse of hope will hold out strong inducement to the creditor to comply with the proprietor's application for loan. In the exercise of the discretionary power vested in it, the Court may accord its sanction to some decree-holders, and withhold it from others. As it is not always easy to give convincing reasons for the difference in the treatment of several creditors, the fairness of the Court's dealings will be called in question. The disappointment and sourness of feeling caused by the refusal to pay, after the lender had obtained a decree at a considerable cost, would be unbearable. Where the prevention of a prohibited act is possible, to wait until its commission and then punish the offender, is not politic. The consideration shown to the feelings of the Zemindar ought not to be denied to those of his creditor. I would not hold out any hope whatever to the creditor, of the recovery of his debt unless the loan was made with the permission of the Court of Wards. I would place the obstacle *at the entrance* and thereby remove all cause for complaint on the score that the law did not actually prohibit the loan but that the Court of Wards arbitrarily refused its payment. The cause of morality and justice will be better served by imposing upon the Zemindar the obligation of contracting a loan with the leave of the Court of Wards.

I wish to take this opportunity of suggesting for your consideration, the advisability of passing a law prohibiting the partition of ancient Zemindaris, at the instance of coheirs. The famous decision of the Privy Council in the Nuzvid case has unsettled the law relating to the impartibility of Zemindaris. The subsequent decisions of that august body have not improved the matter. The result is that every one of our Zemindaris is now in litigation to obtain an adjudication as to its character. The policy that justifies the protection of encumbered estates equally warrants its impartibility. Before the Nuzvid litigation, no one even dreamt of a partition of a Zemindari which was treated, for purposes of inheritance and succession, as a principality. I trust you will take up this subject.

Trusting this will find you in sound health, and wishing you every success in your patriotic undertaking,

I remain,

Yours very truly,

K. KRISHNASWAMI RAO.

To

M. R. Ry.

THE HON'BLE P. CHENTSAL RAO,
PANTULUGARU, C. I. E.

My Dear Sir,

In acknowledging the receipt of your printed circular of the 4th instant, I have much pleasure in stating that I highly approve of your idea that a law similar to Act 4 of 1892 should be passed for the Madras Presidency.

2. I am of opinion that Government management of Zemindaris is more beneficial than their management by incompetent Zemindars.

3. I would see it enacted that the owners of such Zemindaris are not competent to borrow money in any case.

4. They should no doubt be granted allowances suitable to their rank and condition in life, but what is a suitable allowance should be settled by a Jury rather than by Government. I have known of several cases in which Government failed to decide correctly and gave room to mischievous results.

Krishnavilas Mylapore,
10*th May* 1892.

Yours sincerely,
R. RAGOONATH ROW.

Venkatagiri Town.
23*rd June* 1892,

To

P. CHENTSAL RAO, Esq.

Dear Sir,

I beg to acknowledge with thanks your letter (in print) of the 4th May 1892, with enclosures, inviting an expression of opinion upon your proposal for legislation for the Madras Presidency on the lines of the Bengal Act IV of 1892.

I have already in my private letter of the 26th May 1892, expressed to you the pleasure and sense of gratitude with which I had read your speech in the Viceregal Legislative Council.

In the main, I agree in your views as to the scope and limitations to be assigned to the proposed legislation, and I trust your motives will meet with universal, as they command my approval.

As regards, however, your special query as to the competency or otherwise of owners of estates taken under Government management "to borrow money," it strikes me that the Bengal Act subserves all desirable ends without declaring such owners who are otherwise '*Sui juris*' incapable of incurring contractual obligations.

As it would however defeat the very object of the legislature to place the owner at liberty to charge the estate directly or otherwise with such obligations, the provision is necessary and seems to be ample that except with the consent of the Court, decrees against him should not be capable of execution against the estate.

But before closing this reply, I venture to take this opportunity to enlist your beneficent action in other directions also for the protection of aristocracy which is now engaging your attention, and, for such purpose, to trouble you with some of my views which, as the President of the Land Holder's Association I have been able to form with the opportunities at my command.

The prevailing sense of the Zemindar class so far as I have been able to guage it is that they labor under some avoidable disadvantages the most pressing among them being 1st the undefined state of the law as to the liability of Zemindaris for partition; 2ndly, the extensive powers of alienation of the holder of an estate over it and its liability for debts contracted by him to an extent incompatible with its maintenance or preservation.

I am, however, glad to be able to say that the first mentioned disadvantage which has during recent years become almost a scandal, has engaged the attention and labors of one of the Honorable Members of Madras Government, and I would in the name of the class to which I have the honor to be long, solicit your hearty co-operation in the same cause, without enlarging on the subject beyond pointing out the desirability of preserving intact, at least some classes of Zemindaris if need be by statutory immunity—from dismemberment which at present is a standing menace to every estate, regulated only by the will and pleasure of any member of the family of the holder who can indulge in the pastime of dragging it into litigation—ruinously costly in many cases and most harassing in all—before the tribunals of the country and the Privy Council for long years.

Towards the same consummation, *viz.*, the preservation of estates, the elimination of the second mentioned disadvantage is an end to be striven after and can be attained only by invoking the helping hand of the Legislature in the present state of the law under which the holder if not a member of a joint family, is at liberty to make a wholesale alienation of the estate for worthy or unworthy purposes.

The seemingly conflicting decisions of the High Court of Madras and Northwestern Provinces marginally noted on this vexed question of alienability might lead to ruinous litigation, many a poor Zemindar and ought therefore soon to be settled by a definite provision of law.

Kangundi alienation case I. L. R., Vol. XIII of 1889, page 197, S. Kuari, vs. D. Kuari, I. L. R., Vol. X, page 272, Al.

If Legislature thinks that the Zemindar should have the power of alienation to a small extent even that should not go beyond his life time. My own humble opinion as regards the liability of the estate for debts, is that the holder in any case should have but a life interest more or less of the character of a trust for the benefit of the other members and dependants of the family. Restricting the powers of Zemindars in the manner above stated, I wish to add my opinion as to the way in which Zemindaris are to pay the arrears of Peishcush which may fall due on account of bad season or otherwise.

The arrears of Peishcush might be cleared either by the estate being taken under the management of the Government which as often as it recurs is only conducive to the better management of the estate; or the Zemindar may be allowed to manage the estate himself and asked to pay the arrears in easy instalments in addition to the usual Peishcush which he

shall have to pay, provided that in the estimation of Government such Zemindar deserves the special consideration.

I beg to be excused for trespassing upon your time more than your communication under acknowledgment entitles me to do, but my apology is the pressing need, which I humbly think there exists, for legislative interference and help in the directions I have ventured to point out, and the avowed and undoubted attitude you have so kindly assumed as a member of the Supreme Legislative Council in the interests of the landed aristocracy of this Province.

Yours very truly,

V. R. KRISHNAYACHANDRA.

TO

THE HONORABLE P. CHENTSAL RAO, C. I. E.,

Palace Cottage,
Bangalore.

DEAR AND RESPECTED SIR,

In reply to your letter of 4th May 1892, I have the honor with the greatest diffidence to express may opinion as follows:—

(1) The object of the Bill seems to be to save (not "deserving Zemindaris" but) Zemindaris which in the opinion of the Government should be, in the "public interest" preserved in the same line of ownership.

(2) A Talukdar of Oudh (or, as some say, his English mentor) has, in an Article in the 19th Century Magazine, attacked Vakils, Mukhtiars, retired officials, money-lenders and traders who by diligence and superiority of intellect and character are superseding the old aristocracy as holders of land and as leaders of the people. The Article suggests that laws should be passed declaring ancient estates to be absolutely inalienable and empowering Government to take charge of the estates.

(3) The Honorable Sir Philip Hutchins says in the Debate on the Bill "but the Government of India take a much wider view of their duties. It appears to us that the manner in which their estates are passing into the hands of money-lenders and other non-agriculturists involves a grave political danger, and that we are under an obligation to take such reasonable measures as may appear necessary to secure ancient proprietary families from being ruined by the folly or misfortunes of a single representative with a view to rescue it from the clutches of speculative money-lenders". (But are Zemindars, agriculturists any more than money-lenders.) This opinion of the Honorable Sir Philip Hutchins seems to be shared by several Englishmen in high position. Many also hold that the political agitations in the country are due to the decay of the influence of the old landed aristocracy and that the latter have always been found on the side of "Law and Order" against the political agitators. Most of the speeches on the Bill show that the Bill is intended to protect not only

such Zemindars as through misfortune or through their ancestors' sins (3rd para of your letter) are involved in debt, but all Zemindars to whom Government consider it necessary as a political move to afford protection.

(4) The Honorable Sir Alexander Miller referred to provisions in Scotch, French and German laws. Those provisions are taken from the Roman Law under which a confirmed prodigal was treated as an idiot, a curator or guardian was appointed for his estate and he was declared incapable of entering into contracts. If those Roman Law provisions are beneficial and should be introduced into the country, let them be introduced in all cases and not to the owners of those estates only which Government considers politically expedient to preserve intact in the same family line.

(5) I am against Government interference in management of private estates except through guardians and receivers appointed by the regularly constituted Courts of Justice which give reasons in open court for every act of theirs. I also hold (with profound respect to the contrary view) that the old aristocracy especially in the South of India are not fit objects of commiseration or protection and that the country will be very much bettered by their extinction, most of them having been descended from Robber Chieftains who gained power and wealth during the dark and troublous ages of Indian Mediaevalism and whose descendants seem constitutionally incapable of adapting themselves to settled progressive, sober domestic life notwithstanding the veneer of English Education imparted to some of them. They are usually surrounded by idle flatterers who would have been good helps in olden days in increasing the terror of the Zemindar's name but are now nuisances. The serious political danger apprehended from the Zemindaris passing into the hands of the enterprizing middle class is in my humble opinion, a myth and if the old aristocracy has lost their influence, it is because of their indolence and ignorance and of their utter uselessness to their fellow creatures. They are sometimes called "the natural leaders" of the people, but I have been unable to understand the expression as I hold with Carlyle that he alone is a natural leader whose energy and insight into the truth of things and sympathy with all men naturally gives him power and influence. The old aristocracy is on the side of Law and order because of the Pax Brittanica which has destroyed their old lawlessness and because their sullen envy at the progress of the middle classes in peaceful times and their ignorance as to their true interest make them incapable of seeing the advantage of leading constitutional reforms so as to put down dangerous and revolutionary agitations.

My hopes for the progress of India, politically, socially, and economically lie in constitutionally governed Native States and in the new aristocracy composed of earnest educated men and retired officials of experience and of enterprising wealthy traders like Sabhapati Mudaliar and Sir Savalai Ramasami Mudaliar and I think it better to look thus into the reality of things instead of trying to bolster up effete institutions which whatever their political significance in troublous and lawless times have become "lies" as Carlyle would put it and merely cumber the ground now.

I agree with the statement in the penultimate para of your letter that "the existence of a well conducted landed

aristocracy is a source of strength to the country" but such an aristocracy ought to and will arise and is being formed in the natural course of things and it is merely to delay the natural completion of the process now going on to artificially aid the old ill-conducted aristocracy, with very invidious distinction. The proposed Legislation is also very incomplete. Impartible Zemindaris have been declared by the Privy Council in I. L. R. 10 Allahabad, page 272 to be completely alienable by the holder for the time being, the successor having no right to question the alienation. What is the use of the Government protecting an estate for a few years in order to hand it over to a man who or whose successor could at any moment alienate it in its entirety to a complete stranger? If again the view be adopted that only deserving persons should be assisted by Government with its ability to borrow from English money-lenders at reduced rates of interest and its ability (arising from its prestige and from its servants having Magisterial powers) to settle with tenants, I fear that not more than one case of such kind will arise in a century and it is very doubtful even then whether Government would consider it a deserving case and whether it will not rather prefer another case under erroneous considerations of political expediency. Legislation to meet such very isolated cases is sure either to be misapplied or to become obsolete.

If you notwithstanding these objections, think the passing of a Bill in the interests of Zamindars advisable, your amendment as to prohibition of alienation is, of course, much more logical (as admitted by His Honor the Lieutenant Governor of Bengal) than the crude suggestion embodied in the existing Bill, namely that the consent of the Court of Wards should be obtained for execution of the decrees passed for debts contracted during the Government management. If the person is incapable of managing his Zemindari, he is also incapable of entering into contracts and if he is such a confirmed prodigal as to necessitate his being treated as an idiot, the same conclusion follows.

With very sincere regards,

I beg to remain,

Your most obedient Servant,

21*st June* 1892.

T. SADASIVIER,
District Munsiff, Srivaikunta.

SOUTH ADYAR, MADRAS.

14*th June* 1892.

MY DEAR SIR,

The subject of rescuing encumbered estates is a very old one and has been before the public for many years.

The satisfactory working of the law to place an embarrassed estate under the Court of Wards enacted in 1873 for the North-Western Provinces, the Chota Nagpur Encumbered Estates Act, and the amendment recently effected in the Bengal

Court of Wards Act of 1879, happen to be the outcome of experience and patient deliberation, and tend to prove the great political expediency of adopting reasonable measures necessary not only to secure certain ancient proprietary families from being ruined, but also to create out of deserving materials a well conducted and enlightened landed aristocracy to become a source of strength politically, socially and economically.

An enactment similar to what has been recently passed to amend the Bengal Court of Wards Act will prove very beneficial for Madras also.

With reference to the question raised and opinion requested in para V of your letter, I think that when any owner is declared incompetent to have charge of and manage his own estate he should for the sake of self benefit sufficiently explained in your remarks on the subject and as a natural sequence of these proceedings be declared incompetent also to raise funds as he will under any circumstance be granted an allowance suitable to his rank and condition in life which might be increased or decreased according to the requirements of the time.

Yours very truly,
HUMAYUNJAH.

To—The Hon'ble P. Chentsal Rao, C. I. E.

VIZAGAPATAM,
25*th June* 1892.

MY DEAR SIR,

I had the pleasure of receiving your letter, dated Bangalore, 4th May 1892, together with its accompaniments.

A legislative measure for the protection of encumbered estates by bringing them under the management of the Court of Wards, is a great desideratum in this Presidency also. You are aware that we have had in this district so many as sixteen ancient estates at the time of the Permanent Settlement and now we have at present left only five ancient estates intact. Of the estates disintegrated or are about to become so, I am quite sanguine that the interests of no less than three can be protected should you succeed in legislating as you propose.

You rightly observe that "there are cases in which good natured men have been the victims of adverse circumstances such as successive bad seasons, family dissensions, evil associations, corrupt subordinates and so forth, and there are also cases in which persons suffer for the sins of their ancestors and it is only such men that you like to protect and give a chance of maintaining their estates intact." An application from the owner for the help of Government and a discretionary power to the latter to grant it or not according to the merits of each case, are I think, the necessary provisions in a measure such as is now proposed. Mr. Turner while Col-

lector in this District was very anxious to have the encumbered Estates Act of the Central Provinces extended to this Presidency and addressed the Madras Government on the subject, if I was not mistaken. It is true that if the Government were to accept the management of every estate as a matter of course on the mere application of its owner, Zemindars will grow careless and will not feel their own responsibilities. Their time will be unoccupied and indolent habits will take their root.

With regard to the second point on which my opinion is asked, *i. e.* whether during the management of the estates by the Court of Wards, the owners should not be competent to borrow money without the consent of the Court, I beg to state that there are reasons both for and against it. It will be hard to deprive a Zemindar of all liberty to borrow money how small the sum may be for urgent purposes without the permission of the Court of Wards. On the other hand if he is allowed to execute fresh bonds to his sahukars without any check, he may go on borrowing money and spending it and his estate may stand liable to such debts when it is out of the management of the Court of Wards or in the hands of a successor. The object of the Government help will be frustrated if another debt is ready to swallow up the estate as soon as it was free from the prior debts, and the estate was handed over by Government to the old Zemindar or his successor. The evils of this overbalance the inconvenience to which a Zemindar may be subjected by his power of contracting debts being cut short during the management of the Court of Wards. I agree with you therefore that the owner should not be competent to borrow money without the consent of the Court of Wards.

Yours very truly,
G. N. GAJAPATHI RAO.

To—The Honorable P. Chentsal Rao Pantulu Garu, C. I. E.,
Member of the Viceregal Legislative Council, Bangalore.

COURTALLAM, TINNEVELLY,
24th June 1892.

MY DEAR SIR,

In reply to your printed letter of the 17th May last, on the subject of placing encumbered private estates, in charge of the Court of Wards, on the application of the owners of such estates, I beg to state that the reasons which have induced the Council of the Governor General to amend the Bengal Court of Wards Act, 1879, in view to enable the Court of Wards to assume management of encumbered estates, with the consent of the owners thereof, are in my opinion equally applicable to such estates in this Presidency and I approve of your proposal to extend the principle of the said enactment to this Presidency.

So far as the creditor is concerned, I presume it is not intended that any of his rights and remedies against the debtor and his estate should in any degree be affected by the

management of the estate being assumed by the Court of Wards and if the debtor seeks the help of the Court of Wards in order that his debts may be discharged by a more economical and efficient management of his estate, I see no objection to the Court of Wards being empowered to afford the help solicited in cases in which they may think fit to do so and the applicant is deserving of consideration. If the discretion proposed to be given to the Court of Wards be exercised as explained in para 3 of your letter, only in cases in which the embarrassment of the proprietor is not the result of his misconduct or reckless extravagance, there is no reason to apprehend that the proposed enactment will have any demoralising effect.

As regards the effect to be given to contracts entered into by the debtor during the period of retention by the Court of Wards of the management of the estate, I am decidedly of opinion that he should be placed substantially on the same footing as other wards under the protection of the Court of Wards and declared disqualified to enter, without leave of the Court of Wards, into any contract involving him in any pecuniary liability or affecting his estate. So far as the outsiders are concerned, the fact of his being a ward will certainly be a matter of notoriety and it is extremely unlikely that any one will be induced to enter into a contract with him in ignorance of his status, and so far as the proprietor himself is concerned, there can be no hardship in placing him under such disability, inasmuch as it is only by his desire and solely with the object of discharging his debts, that the Court of Wards assume management of his estate and also because adequate provision is made for his maintenance during the continuance of such management and in cases of necessity, he has only to obtain the sanction of the Court of Wards to contract debts. The provision made in the Bengal Court of Wards Amendment Act to the effect that the ward shall be capable of entering into contracts but that no property of the ward shall be liable, except with the leave of the Court of Wards, to be taken in execution of a decree made in respect of such contract, seems to me altogether inadequate and also calculated to mislead persons desiring to enter into contracts with the ward. The provision, I presume, does not exempt the proprietor from liability to be sued on such contracts and arrested and imprisoned in execution of decrees obtained thereon. If the object of the provision be to enable him to command credit notwithstanding that he is a ward, no creditor will give him any credit, except upon the prospect of enforcing the credit by arrest and imprisonment of the proprietor and the proprietor cannot command credit otherwise, inasmuch as no creditor can calculate upon the Court of Wards giving leave in future to his executing the decree against the property of the ward.

However beneficent the object of the proposed measure may be, I am very doubtful that the class of persons for whose benefit the same is intended will, except in rare cases, avail themselves of its provisions. It is universally acknowledged that so far as the proprietor and his heirs are concerned, nothing is more advantageous to them than the proprietor becoming a ward of the Court of Wards. But it is notorious that nothing is more unwelcome to the relations, dependents, employés, and hangers on, of the proprietor than the management of the estate passing into the hands of the Court of Wards. As a general rule, the proprietor, for whose welfare

the measure is chiefly intended, is subject to the influence of one or other of the said class of persons who surround him and in a matter of this sort, it will be the interest of all of them to unite in dissuading the proprietor from allowing the estate to pass into the hands of the Court of Wards and they will successfully do so by feeding him with hopes of getting loans in the English market at a favorable rate of interest, on the security of the estate without parting with possession and management thereof. In a few exceptional cases, however, there can be no doubt that the proprietor, without yielding to such sinister advice, will, under the influence of better and disinterested persuasion, avail himself of the provisions of the proposed measure,

I am yours sincerely,
V. BHASHYAMA IYENGAR.

CHIDAMBARAM,
29th June 1892.

DEAR SIR,

I thank you very much for the honor you have done me in asking for my opinion on your proposal to introduce a similar enactment as the Bengal Act IV of 1892 for the protection of encumbered private estates in this Presidency.

I have no hesitation in at once saying that such an enactment is absolutely necessary for this Presidency to save from ruin the many private estates which by the folly of their proprietors or mismanagement by their officials have been brought into a state of hopeless indebtedness. But I should add that your restriction of its application to only "hard cases" "in which good natured men have been the victims of adverse circumstances," &c., and not to those who are of an "unworthy character" and who have "wickedly involved themselves in debts," &c, defeats in my opinion the object of your proposed legislation, *viz*: "to save the ancient and deserving Zemindaris from dismemberment". Your proposal merely protects *certain individuals* and not *estates*. The result of withholding Government help to a bad character who happens to be at the head of an estate by Fate ruins the estate and not the Zemindar who personally may not care a bit as to what may happen to the estate after him. I should be glad therefore if you would go a little further and make the Government help applicable to all cases and even compulsory when it is satisfied that such interference is absolutely necessary to protect the estate from ruin. This may be considered interference with the private rights of individuals but it is at best only a benevolent act warranted by good policy, especially when the proposed legislation is undertaken on the assumption that the existence of a well conducted landed aristocracy in the country is a source of strength, politically, socially and economically. After all, cases of this sort will be very rare and such a provision in the law may even deter proprietors from running into debts recklessly as they are now doing.

Your proposal to place legal restrictions on the powers of the proprietors to contract debts during the period of management of estates by the Court of Wards is highly desirable as I think it vain trouble for the Government to undertake the management of an encumbered estate and bring about order out of chaos if it does not provide against its being similarly involved immediately it is restored. Further I think it necessary that in the public interest the Government should interfere when the proprietor of an ancient estate is wasting away his property and disqualify him to contract further debts or make his liabilities not binding on the estate.

The chief objection taken to provide against the proprietors contracting debts in the Bengal Act while the estates are under management is that the new class of wards consists of persons who are *sui juris* in the eye of law and are not disqualified except under the particular provisions of that Act. The proposed enactment is intended to disqualify a Zemindar from managing his estate and why not from contracting debts. There is no hardship in introducing such a measure when the proprietor gets a decent stipend for his maintenance and further funds on extraordinary occasions of marriage, &c.

I am Dear Sir,
Your sincerely,
J. LAKSHMIKANTA RAO.

MYLAPORE,
9th July 1892.

MY DEAR SIR,

In reply to your letter of the 4th May, I beg to state that the legislative measure therein proposed has my concurrence.

2. I was at first opposed to it, and said so when we had a short discussion in person on the subject; but after carefully considering the reasons so clearly set out in your letter, I have been induced to change my views.

3. The view I first took of the question was this:—

In the case of estates fairly well-managed, there is no need for interference. In fact, it is for those reduced to the verge of ruin by bad management that protection by the proposed legislation is intended. As regards these latter, the protection contemplated would not radically remedy, but rather perpetuate, the evil inherent in the Zemindari system; for, the owner, directly his estate is restored to him clear of its encumbrances, will again be surrounded by evil associates and greedy parasites, and will, within a short time, find himself again in the position he was in when the estate was taken under the Court of Wards' management. Practically, it is the evil associates and parasites of the Zemindar and not the Zemindar himself that will have been helped.

4. I see, however, now that every encumbered estate which the owner may wish to place under the Court of Wards need not be taken under management. The Government may sanction interference only where the impending ruin is not the result of the present owner's prodigality, and

there is a reasonable prospect of the estate, when it is handed back to him in an improved condition, being managed with ordinary care and thrift. Thus, tangible benefit may accrue from the proposed legislation in the way of saving some few of the ancient proprietary families from total ruin.

5. I agree with you in thinking that, in cases of the nature contemplated, management by Government agency would be more efficient. Under the assurance of efficient management, it would be more feasible to procure loans on easy terms to clear the more pressing of existing debts bearing heavy rates of interest. In Zemindaris which are in a state of chronic indebtedness, the relation of landlord and tenant is most unsatisfactory, and the latter's outstanding liabilities are in a state of hopeless confusion. Much can be done during management by Government agency to clear this confusion and to place the tenant's obligations on a secure and satisfactory basis to the great benefit alike of the landlord and the tenant.

6. I agree with you also with regard to the restriction to be imposed on the owner's exercise of his own rights during his wardship. The restriction, it seems to me, should extend to all contracts involving pecuniary liabilities, instead of being limited to such as affect the property under the charge of the Court. Practically, it makes little difference whether the property is brought to sale for a debt contracted during the proprietor's wardship or for one subsequently contracted in order to discharge it. As you observe, a ward who can only offer personal security must borrow at heavy rates of interest, and the limited restriction, therefore, in Section 13 of Act IV of 1892, instead of preventing the accumulation of liabilities, would tend to create heavier liabilities, during the period of wardship, and thus rather aggravate than check the evil it is intended to guard against.

7. It may be argued that, inasmuch as the State interference is to be restricted to cases where the character of the proprietor gives a fair promise of future frugality, there need be no apprehension of his running recklessly into debt during his wardship; but then, there would be no need for any restrictive provision at all in view of the protection of the estate against the intermediate growth of liabilities. The object is to provide against possibilities, and there is a possibility of the inheritance during the Court of Wards' management passing on to the next heir, and that heir contracting debts. On the whole, seeing that the Court of Wards may reasonably be expected to make suitable provision for the necessary expenses of the family, and further that they can accord their sanction to any debt being contracted for necessary purposes on the security of the estate, I can see no objection to the Wards' disability being made complete and effectual for his own benefit.

Yours very truly,

T. VENKASAMI ROW.

SUBORDINATE COURT.

Tanjore, 7th July 1892.

No. 544.

From C. VENKOBACHARIAR,
Subordinate Judge,
Tanjore.

To THE HONORABLE P. CHENTSAL RAO, Esq.,
Bangalore.

SIR,

In reply to your communication of the 4th may 1892, I beg to state that the measure proposed by you is, in my opinion, likely to prove beneficial alike to the class of landed proprietors in whose interests the legislation in question is proposed, as also to their creditors and money lenders.

2. Considering the remarks on the Bengal Bill and especially those made by Sir P. P. Hutchins, I think that it may be taken as granted that the Government is in favor of adopting such measures as may secure ancient estates and noble families from ruin and prevent their estates passing into the hands of persons who may be said not to belong strictly to agricultural classes.

3. Those, who have had the opportunity of studying the histories of the Zemindaris which have been the subject of litigation in this Presidency and even elsewhere, will, I believe, readily support the measure in question as a step in the right direction. In many cases, I think, estates have been ruined by the misbehaviour and mismanagement of the ancestors of the proprietors against which their successors were unable to contend. The successors, I think, have a claim to be protected by Government against absolute ruin, and when they themselves consent to place their estates in the hands of Government for a time under certain conditions, I fail to see any good reason why the Government should not take them up and manage them making due provisions for the maintenance of the disqualified proprietor.

4. I have no statistics before me to enable me to say whether private management or that by the Court of Wards is more economical; but, from circumstances which have come to my knowledge in some instances at least, the cost of management by Court of Wards has to my mind been less than that of an ordinary well managed private estate. I may quote an instance too. There is a Zemindari which has been for sometime held by Nattukottechettis as mortgagees and though apparently, it is well managed, and proper records are kept, the cost of management has, I believe, been greater than it should be.

5. The measure, if it becomes law, as I hope it will, will in all probability secure to the disqualified proprietor a greater degree of comfort and peace than he has ever had, while it may tend to disassociate him from idlers and flatterers and will instil in him habits of prudence and economy. On the other hand, seeing that he will be powerless to create any charge on his estate during his ward ship without the consent of the Court of Wards, he will not be so easily resorted to by would-

be lenders of money. In some instances, money lenders themselves at first tempt and entrap the Zemindars and then make them their victims. As to the Zemindar's competency to enter into any contracts personally, the matter may be left to be mutual good sense of the Zemindar and money lender; and moreover the money lender may not be very forward in offering his services owing to the salutary provision against needless imprisonment of Civil debtors. The creditor may therefore be presumed to safeguard himself and it is unlikely therefore that he will throw away and risk his good money seeing that he cannot touch the estate and that it would be exceedingly difficult for him to get his debtors imprisoned.

6. I do not overlook the difficulties which beset a measure of the kind in question. They are mainly the outcome of the Hindu Law principles. If the measure is to be confined in its operation to impartible estates, then its working may not be found impracticable. Even here, any adult person who becomes disqualified should be declared as I remarked before, to be incompetent to create any charge on his property during his wardship. I doubt much if he could be fettered further and could be declared to be incompetent to enter into any contract. If he cannot be so treated then the matter may be left as it is, having in view the remarks made by me above as to personal obligations. Another difficulty is that caused by the *dictum* that an impartible Zemindari is generally alienable. In the face of the law as it is, the result after all may be that after the estate is conserved and placed in a flourishing condition, it may pass into the hands of the very persons whom the Government wish to keep at a distance. If this is to be the end, then the benefits and expediency of the measure become questionable. The Legislature will, I fancy, have to make these impartible estates also inalienable if the Government is anxious to preserve them in their integrity.

I have the honor to be,

Sir,

Your most obedient Servant,

C. VENKOBACHARIAR,

Subordinate Judge.

EXTRACT FROM THE HINDU.

One of the objects of the amended Court of Wards Act which has just passed the Viceregal Council is to enable the Government to bring under the management of the Court of Wards estates when it might be considered desirable in public interest to bring them under such management. The Government is not empowered to move unless on the request of the proprietor of the estate. It seems to us that some such provision will be very beneficial in this Presidency also, where the rule is that these estates are taken charge of by the Court of Wards only when the proprietors are minors or by mental defects are incapable of managing them. The Hon'ble Mr. Chentsal Rao took the same view and has promised in a way to introduce a Bill for the benefit of Madras some time next year, with the permission of the Government of India and after consulting the Madras Government. As it was observed by him, there are in this

Presidency some very ancient Zemindaris which by the imprudence or incapacity of their proprietors have been brought to the brink of destruction, and these persons will be very glad to hand over their estates, if possible, to the Court of Wards contenting themselves with a fixed allowance for their personal expenditure. But there is no provision empowering the Government thus to interfere and save these ancient estates from being broken up and taken over by money-lenders or foreign speculators. Objection might indeed be taken to the Government thus taking upon itself the responsibility of managing private estates. This objection was actually taken by the High Court of Calcutta and was answered, conclusively we think, by some members of the Council. Sir Philip Hutchins thus answered this objection:—"The third and last objection is one of which the Government of India cannot admit the force, and which indeed is contrary to their recognized policy. It is asserted that the State has no concern with the affairs of any of its private subjects, and that its interference for the purpose of saving private estates is 'a retrograde step, substituting, as it does, for the ordinary law applied in Courts of Justice what is really a special intervention of the executive at its own discretion.' Their Lordships have not explained how the ordinary law as applied by the Courts can operate to protect an encumbered estate from ruin, and, if their view is to be accepted and State intervention excluded, all our enquiries into the intricate subject of agricultural indebtedness are merely causing vain trouble and expense. But the Government of India take a much wider view of their duties. Whether we have regard to the raiyats of the Dekkan, the peasant-proprietors of the Punjab, or the great Zemindars of the Lower Provinces, it appears to us that the manner in which their estates are passing into the hands of money-lenders and other non-agriculturists involves a grave political danger; and that we are not only justified in taking, but under an obligation to take, such reasonable measures as may appear necessary to secure ancient proprietary families from being ruined by the folly or misfortunes of a single representative. The law of most Provinces already empowers the Local Government, with the proprietor's consent, to place an embarrassed estate under the Court of Wards with a view to rescue it from the clutches of speculative money-lenders. As long ago as 1873 a law to this effect was enacted for the North-Western Provinces, and the Government of India are assured that it has worked admirably. It is time now that it should be extended to Bengal, as it will be if this Bill becomes law; but in this Bill we have introduced a safeguard against unnecessary interference, which does not exist in other Provinces, by providing that no proprietor shall be declared disqualified, even on his own application, unless the Lieutenant-Governor is satisfied that the public interests require him to intervene. No doubt that is a somewhat vague expression, but the very nature of the subject makes it imperative to give the Head of the Local Government a large discretion." It was also pointed out that a similar law prevails in other countries. The Scotch law goes beyond the Bengal law in that, whereas according to the Bengal law the consent of the disqualified proprietor is necessary before his estate is taken over by the Court of Wards, according to the Scotch law of *Prodigus* a man, otherwise *sui juris*, may under certain circumstances be deprived against his will of the right of managing his property. The Hon'ble Law Member added,

"The laws both of France and Germany have always recognized the right of the State to prevent a man from dissipating his property and the power of a *counscel de famille* was until the introduction of the Code Napolean very much greater in that respect than anything now proposed, and within the last few years the Lunacy Law in England has been so far modified as to enable the Master in Lunacy to declare a man unfit to manage his property without declaring him a lunatic or taking charge of his person." With the example of countries like France, Germany and Scotland, any law extending the protection of the Court of Wards in the manner proposed in the new Act will not be a departure from the precedents of civilized Government. It does seem remarkable that the Government, with all its cumbrous procedure and disposition to extravagance, should be able to manage estates better than private individuals. Still, such is the fact, and many an ancient and large estate would have been ruined but for the protection of the Court of Wards. No better example can be cited than that of the splendid property of Ramnad which was handed over to the present proprietor in a very good condition and with a surplus of three lakhs of rupees. The young man who, by-the-bye, was educated by a special English tutor, has within the three years that he has administered his estate, not only squandered away the three lakhs but has also incurred large debts and otherwise placed himself in difficulties now and again. The hopeless indebtedness of Karvetinagar and Kalahasti is well known, and the proprietors will be only too glad to hand over their properties to the Court of Wards, contenting themselves with certain fixed amounts for their maintenance, until the debts are paid up and the property can be restored in a flourishing state. Looking at the matter from the point of view of economic theories, the movement of property should be free and the interference of Government to keep it in the possession of certain class of men must be unnatural and harmful. But whatever may be the theory, there can be hardly any doubt as to the social and political advantages attendant on the existence of a landed aristocracy pledged to order and peace and commanding leisure and resources to help to advance public interest. We know what a prosperous and intelligent nobility was able to do in European countries in past times; and India also might expect a similar service from the same quarter in her present state of unrest and change.

To

M. R. Ry.

THE HONORABLE P. CHENTSAL RAO, C. I. E.,
&c., &c., &c.,
Madras.

My Dear Sir,

I thank you much for your letter of the 4th May last and its enclosures.

It is very good of you to seek to obtain an enactment for the relief of encumbered estates in the Madras Presidency similar to the one—Act IV of 1892—recently passed for Bengal. Such a measure is now called for more than ever since the Madras High Court has passed a decision that Zemindaris how ever ancient or old are, as a rule, alienable. There are also in these northern parts not a few estates which are

heavily involved in debts and are on the brink of ruin. Unless some legislative protection, such as you propose, is soon afforded, many of these estates are sure to be broken up and many old and historical families will become extinct. It is quite true that the existence of a well conducted aristocracy in the country is a source of strength socially, politically and economically. The preservation of ancient and deserving Zemindaris is the object of the Bill. I think this object can fully be attained by the interference of Government not being confined to cases in which the proprietor seeks its aid, and that Government should have power to take under management any estate which it thinks is deserving of help. With this view some rule may be laid down for guidance; for instance—when $\frac{1}{3}$ of the net income of an estate after payment of all public dues is not sufficient to pay the interest due to creditors, Government may step in to save the estate.

It seems to me that the protection of Court of Wards should be confined to impartible Zemindaris; interference in the case of other landed Estates is, in my opinion, inexpedient.

The Hindu Law of partition will ultimately bring about the dismemberment of any estate unless it be an impartible Zemindari.

The Land-Holders' Association, Madras, will, I think, furnish you with an expression of their views on the subject.

In their Memorial to Government, dated 5th December 1890, the Association, as you are probably aware, touched on the desirability of preserving ancient estates and of securing them against sale of debt.

You have given very strong reasons for proposing that during the management of the estates by the Court of Wards the owners should not be competent to borrow money without the consent of the Court. It is very desirable that the personal liability of the debtor should be removed. Your proposal entirely meets with my approval.

Trusting that your proposals will receive the support they deserve.

I am,
Yours truly,
RANGA ROW,
Raja of Bobbili.

Bobbili,
8th July 1892.

Wexford House,
Egmore, 29th July 1892.

My dear Mr. CHENTSAL RAO,

Continued ill-health prevented me from sending you an earlier reply to your printed Circular on the subject of making some legislative provision for saving encumbered estates from utter ruin.

I am very glad you have taken up this subject. The State should, I think, do more than it at present does, to preserve Zemindari estates in their integrity. *Laissez faire* may suit some countries of Europe, but I am convinced it is a policy utterly unsuited to the present condition and needs of India. The measure you propose in its broad outlines seems to me to minimize the interference and the responsibility of the State while it cannot be said to put any illegal or improper check or restraint on the owner of the estate.

As to whether the unthrifty or inefficient owner of a Zemindari estate the management of which has been taken up by Government should have the liberty of contracting debts to any extent he pleases, and as to the limitations under which such debts should be recoverable, I fear I am not quite competent to give an opinion. There is one thing in the Bengal Bill that I am not clear about. Is the Revenue Board to admit or reject debts contracted by the Zemindar only during such time as the estate is under its own management, or is such power vested in the Board even after the management goes back into the owner's hands? I fancy the latter is the right construction. It would, in my opinion, be a much better thing to make such debts invalid and unrecoverable from the first. This however is a detail that does not affect the main question.

Yours very sincerely,
P. RANGANADAM.

High Court House,
Madras, 29*th July* 1892.

My dear Sir,

I must beg of you to excuse me for the delay in replying to your Circular of the 4th May last. I have in person explained to you how it was that I was not able to answer you earlier. Even now I regret I am not able to send you a satisfactory reply. But as I do not wish to delay the matter any longer, I write to tell you that I fully endorse the views expressed by you in your Circular as to the propriety of legislating on the subject. I know of more than one instance where, if such an act had been in force, respectable Zemindars would certainly have taken advantage of the provision of the Act to the great benefit of themselves and their numerous tenantry. As you have observed Government management has often undoubtedly proved of immense benefit not only to Zemindars but to tens of thousands of their tenants.

I have no hesitation in saying that legislation on the lines proposed by you is highly expedient. I also agree with you in thinking that during the management by the Court the owners of the estates under management shouldnot have power to borrow money without the consent of the Court.

I feel satisfied that such a provision will not deter proprietors anxious to save their ancient properties from applying to the Court to take charge.

Yours very sincerely,
S. SUBRAMANIEM.

To

The Honorable P. CHENTSAL RAO PANTULU GARU, C. I. E., &c., &c.

Mysore Government Central Press, Bangalore.—8-8-92.—30.

After careful consideration, I entirely approve of your proposal to introduce in the Supreme Legislative Council, a Bill to give power to the Madras Government to direct the Court of Wards to take charge of estates, the owners of which, though not legally disqualified to manage them, find themselves, owing to want of training in business habits or of sufficient strength of character, to rise superior to the surrounding adverse influences, to be unequal to the task of administering large landed possessions and seek the protection of the Court of Wards to prevent their being irretrievably ruined. The applications of the owners are to be complied with, not as a matter of course, but only in cases in which the Government considers it "expedient in the public interest" to do so. Thus limited, it seems to me that the proposed legislation might do a great deal of good, while it cannot do any harm. The Government has already power under Regulation II of 1819, to attach private estates, where necessary, "for reasons of public policy" and place them under the temporary management of the Revenue authorities, communicating the grounds for the decision arrived at to the District Court and the High Court. The Government is, of course, naturally averse to avail itself of the exceptional powers to interfere with private property granted by the Regulation, save in cases in which the mismanagement of the estate is so serious as to cause well-founded apprehensions of the occurrence of a breach of public tranquillity of such a character as could not be adequately dealt with by the ordinary Civil and Criminal Law. Cases, however, have, I believe, occurred, where the intervention of Government at an earlier stage would undoubtedly have been beneficial to the owners of estates and all other persons having beneficial interests therein, while promoting the object which the Regulation is intended to secure. If all private estates were to be taken charge of at the bidding of their owners, the proposed legislation would of course be open to serious objection, but the Government is not likely to put the law in force except in the case of the large Zamindaris, of which there are about two dozen in this Presidency. Of these, it is obvious that the estates, the owners of which apply for the protection of the Court of Wards, must be very few, and consequently the proposed legislation would not materially add to the work which the Court under the existing law has to perform. Estates, the good or bad management of which concerns the welfare of perhaps a quarter million of tenants, cannot of course be regarded from the point of view of "public interest" with the same unconcern as petty little properties which must be left to their fate for this reason if for no others, *viz.*, that it is impossible for Government to do anything to save them. The proposed legislation sufficiently respects the "rights of property" of the owners in that it makes their consent necessary for the assumption of management by the Court; and the fact that the protection of the Court is asked for by the owners may be accepted as cogent proof of the fact of the Court's management being considered to be more economical and less wasteful than their own. The question may be asked, would owners of estates really avail themselves of the benefits which the proposed legislation is intended to confer, and elect to place themselves in a position of complete dependence on the Court of Wards and practical self-effacement? I reply that some would not, but others would, to save the honor and dignity of their families and to prevent their children being

beggared. The former class of persons must of course be left to their fate, unless the affairs of the estate come to such a pass as will justify the intervention of Government under Regulation II of 1819. There are, however, persons of the latter class among Zamindars who, though weak-minded and easily led, are not devoid of the sentiments of honor and family pride. These men, have, in many cases, received the estates from their predecessors in a disordered condition. They have, perhaps, got into the toils of some relation, domestic, usurer or more questionable character and have not enough strength of character to emancipate themselves from the helpless condition to which they have been reduced. These persons are not unfrequently amenable to good influences and can be induced to commit the one act of self sacrifice involved in invoking the protection of the Court of Wards to prevent the ruin of their families, though it might be useless to expect them to save their estates by their own efforts. It may be that the number of persons who will take advantage of the proposed legislation will be small, but the good done by it should be gauged not by the number of owners protected but by the size and importance of the estates. As regards the interests of creditors who have lent money to the owners on the security of the estates, their position will not be affected by the proposed legislation which in this respect is far less objectionable than the provisions of the Civil Procedure Code which in certain circumstances authorize Collectors to interfere with the execution of decrees and postpone the payment of the claims of decree-holders. I have throughout my remarks assumed that the extinction of these large estates is not considered a desirable consummation. Large estates have their use and place in the national economy, and though it is undesirable for Government to bring them into existence where none exist, as was attempted at the time of the permanent settlement, it is, I believe, good policy for Government to endeavour to arrest their rapid decay and extinction, whenever this can be done without resorting to drastic measures involving violent interference with private rights or weakening of motives of self help and personal independence. One thing is certain, if once these estates are extinguished they can never be created again. Under the operation of the ordinary Hindu Law of inheritance the tendency is to minute division of properties. Though the owners of large estates have as yet done nothing to assume their proper position as leaders in social and industrial movements, partly because they have not had time to change their habits and adapt themselves to the requirements of the new *regime* and partly because the conditions in which they have found themselves, have not been such as to develop their good qualities and usefulness, it is, I believe, not unreasonable to hope that with the spread of education they will before long lead the way in industrial and agricultural improvements. This consideration, to my mind makes the preservation of the few large landed estates found scattered throughout the country amidst a vast multitude of petty peasant properties a desirable object, apart from sentimental reasons sometimes urged for the maintentance of the dignity and influence of ancient families.

2. As regards the second question put by you, I am decidedly of opinion that when an estate is taken charge of by the Court of Wards, the owner ought not to be allowed to counterwork the court's management by being left free to contract fresh debts as fast as the old ones are paid off by the Court. If this is to be permitted, I do not see what good the

Court of Wards can effect by taking the trouble of managing the estate at all. On the contrary, the Court might be doing indirectly a great deal of harm by their interference. So long as the owner has legal power to contract debts, he will have broken away only from the more respectable class of creditors and the field will be left clear to the unscrupulous usurers who would impose harder conditions on him in consideration of small loans made to him to feed his necessities on the plea that they could not look to certain repayment of the sums lent during the Court's management. The owners themselves will be in the position of expectant heirs and reversioners and will be under strong temptations to enter into unprofitable and ruinous bargains. I therefore agree with you in thinking that it is essential that the owner, who is under the protection of the Court of Wards should be disqualified from contracting during the management of the Court any debts which may be enforceable against the estate either during management or after it ceases.

S. SRINIVASA RAGHAVIENGAR.

Mysore Government Central Press Bangalore.—25-8-92—30.

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Court of Wards can effect by taking the trouble of managing the estate at all. On the contrary, the Court might be doing indirectly a great deal of harm by their interference. So long as the owner has legal power to contract debts, he will have broken away only from the more respectable class of creditors and the field will be left clear to the unscrupulous usurers who would impose harder conditions on him in consideration of small loans made to him to feed his necessities on the plea that they could not look to certain repayment of the sums lent during the Court's management. The owners themselves will be in the position of expectant heirs and reversioners and will be under strong temptations to enter into unprofitable and ruinous bargains. I therefore agree with you in thinking that it is essential that the owner, who is under the protection of the Court of Wards should be disqualified from contracting during the management of the Court any debts which may be enforceable against the estate either during management or after it ceases.

S. SRINIVASA RAGHAVIENGAR.

Mysore Government Central Press Bangalore.—25-8-92—30.

1893
REVENUE DEPARTMENT.
Enclosure No. 1
To Current No. 1193

REVENUE BOARD OFFICE
MADRAS

Proceedings of the Board of Revenue

(Land Revenue)

Dated 4th September 1893,

No. 509.

READ Government Order Revenue Department dated 16 August 1893, No. 732.

Resolution

With the above order the Government forwards to the Board of Revenue, for report, a Bill for taking encumbered estates in this Presidency under Government management. The Bill is drafted on the lines of the Sindh Encumbered Estates Act India XX of 1881 as amended by XI of 1884 - and the main points on which the present

present Bill differs from its model are noticed in the covering G. O.

2. The Bill places encumbered estates taken under Government management under the control of the Board of Revenue, not of the Court of Wards, and the powers which it grants in respect of such estates are far larger than the Court of Wards possesses in regard to the estates of minors and females under its management.

3. According to the provisions of this Bill, when Government orders an estate to be taken under management,

(1) All Civil Proceedings then pending in respect of debts due by the estate are suspended; and after the final "liquidation scheme" is sanctioned they are for ever barred (sections 8 & 20)

(2) No fresh Civil Proceedings can be taken against the Estate while it remains under management (section 8).

(3) All claims not notified to the Collector within a certain time are held to be discharged (section 14):

(4) In making out the "liquidation scheme", the Collector is empowered and directed, under rules to be framed by the Local Government, and subject to appeal to and final approval of the Board of Revenue, to investigate all claims against the estate, to determine what is "justly" due to each creditor and how, as will be the case in most instances, the debts cannot be paid off at once, to determine the order in

x Sections 18 & 29

in which they shall be paid, and to fix the rate of interest, if any, to be paid until each claim is discharged (sections 15 to 19 and 31) - And a "liquidation scheme" once sanctioned, nothing can be recovered in respect to the claims therein dealt with but what is awarded in the scheme (Section 20).

4. Assuming that the words "determine the amount ... justly due to the several claimants" in section 15 of the Bill mean that the Collector is to cut down debts for which due consideration has not been received and which have been swollen by exorbitant rates of interest, it follows that the Collector, acting under the guidance of rules passed by the Executive Government, and under the supervision of

of another Executive authority - the Board - is invested with the powers of a Court of Equity or Bankruptcy to a most enormous extent.

5. The Executive, that is to say, first fixes what is "justly due", then arranges the claims in order of merit (apparently again on considerations of Equity) and lastly - allows interest or not as it pleases upon the deferred claims. No person affected by these decisions has any appeal except to the Executive itself as represented by the Board whose decision is final (Section 29), and such a person has to take what the "liquidation scheme" gives him or nothing at all. The Board submits that this colossal transfer of Judicial powers to

the Revenue authorities, and the wholesale exclusion of the jurisdiction of the Civil Courts, would be an arbitrary and reactionary measure which the circumstances of this Presidency do not in the least call for. Moreover, the making out of a "liquidation scheme" will throw an immense amount of work upon Collectors, who have but too little time to spare as it is, and will burden the Board and Government with a mass of appeals. Every creditor whose claim has been cut down or to whom payment is deferred, will of course come up against the Collectors' decision: And even the consideration of a "liquidation scheme" as it stands will give no inconsiderable amount of extra work to the Board.

× so far as an appeal will lie to Govt. against the general liquidation scheme, outside of the matters dealt with in Sections 14, 15 & 16, in regard to which the Board's decision is final (Section 29).

7. To continue the analysis of the Bill:—

(5) Any person in occupation of property by mortgage in an encumbered Estate may, when the liquidation scheme comes into operation, be summarily ejected (Section 21).

(6) The Collector may, after the Board has sanctioned an enquiry, summarily ~~cancel~~ and decide the payment ~~& additional compensation in respect thereof~~ such compensation as he thinks fit ~~to cancel~~ any lease executed within 3 years of the assumption of management which appears to have been granted on insufficient consideration (Section 22), and in respect of acts done under either of these sections the Civil Courts are likewise forbidden to interfere unless there has been manifest bad faith (Section 35), while in respect to Section 21. the Extinction of liabilities provided by the 2nd clause of Section 20 would likewise apply. It has to be noted also that against acts done under Section 22, as in the case of proceedings under Sections 14 — 16, there is no appeal even to the Executive Government (Section 29).

8. Lastly (7) Section 8 (31 (a)) of the Bill prevents the Proprietor of an Estate under management and his heirs from entering into any Contract involving either of them in pecuniary liability in this connection the Board begs to point out that when India Act IV of 1892 was under discussion an amendment in this sense, but less sweeping in its character was proposed by the Honorable Mr. Chentsal Rao and negatived, and it would invite the particular attention of Government to the Speech of the Honorable Sir Philip Hutchins in dealing with that amendment (vide page 51 Part IV of the Gazette of India of 2 April 1892).#

× vide pp 16-18 of the Encl. R.M.

Copy of the Gazette not available.

9. The Bill before the Board has followed the provisions of the Sindh and Chota Nagpore Acts, although the circumstances of this Presidency are entirely different to Sindh, which like the rest of the Bombay Presidency possesses no Courts of Wards, there was a much indebted and hostile aristocracy, while the Lieutenant Governor of Bengal when introducing the Bill which afterwards passed into law as Act II of 1876 (India), took care to point out that Chota Nagpore was a hill country with large land owners virtually in the position of native Chiefs — vide page 5 of the Supplement to the Gazette of India of 29 January 1876. Both these Acts were therefore

(a) vide page 6 of the Proceedings of the Legislative Council for 1876 published by R.M.

-fore

dictated and doubtless justified by political considerations to be taken into account in Madras, as is shewn by the refusal of Government in G.O. dated 10th July 1893, No 608, to legislate in the direction of saving old Estates from partition or alienation, and from the heavy litigation expenses consequent on the present uncertain position of the law in regard to these matters, and by its remarks on Zemindars as a class in paragraph 12 of the same order.

10. The Board agree that Government possessing the rights of Ever proprietors to deal with his own property, and no part of this right should be taken away without strong reasons, which the bill now under discussion and proposed legislation would appear to have the effect of entirely removing the Civil Courts in regard to numerous important matters hitherto within their sole and unquestioned jurisdiction. It is certainly desirable that the Encumbered Estates of prominent individuals should be saved from ruin, but if (apart from such assistance as might be afforded by a law of entail) they cannot be saved they are subject to a judgement they should not be saved at the Solemn Court of Supreme Necessity by the Judiciary the suspension of the ordinary law of the land and the silencing of the Courts in the manner now proposed, and the Board submits that in this Presidency no such necessity has arisen or is to be anticipated. The urgency cases in it must be remembered are already served special treatment by the scheduled districts act and are outside the operation of the Civil Procedure Code.

11. The Board further begs to point out that whereas in the Sindh Act (Section 3 and XX of 1881) interference is limited to the case of Zemindars paying to

paying to Government not less than Rs. 3000 a year the proposed Madras Bill would extend to every petty Shrotriemdar, and inamdar in the Presidency.

12. What the Board had in view when in para 12 of the Board's Proceedings dealt with in Government Order dated 10th July 1893, No 608 it proposed an Encumbered Estates act was a very different piece of legislation, viz, India act iv of 1892 which dealt with Encumbered Estates in Bengal proper. That act merely allows the local Government on the application of a landholder, to put his Estate under the Court of Wards (Section 3) and thereupon it becomes subject like the Estates of minors and females, to the management of the Court under the provisions of act IX of 1879 (Bengal) which runs in the main on the same lines as Madras Regulation V of 1804, though it is much better drafted and similar measure is, the Board considers, all that is required for this Presidency. It is not the function of the Executive Government to interfere with or adjudicate upon the debts already contracted by landholders not being sui juris by reason of disqualification by age, sex or infirmity - that is for the judicial tribunals to determine. All that the Executive can equitably do is, on the request of such a landholder, to take his Estate under management (or preferably put it under the body established by law to protect the interests of disqualified landowners - the Court of Wards) and give him the benefit of efficient administration and of the protection accorded to wards, viz, that while his Estate is under management, it shall not be sold on account of

Government

Government demand though such demand shall have precedence of private debts. (sections 16 and 17 of the Court of Wards Regulations), and that during this period the managing authority shall represent his interests. The Rev, as provided by section 17 of the Court of Wards Regulation, the consent of the managing authority should be required for the repayment of any private debts, leaving doubtful ones to be fought out in the Civil Courts.

13. The Madras Court of Wards Regulation is undoubtedly capable of improvement, and the Board hopes at some not very distant date to be able to submit proposals for its amendment, but it is perfectly workable, and if legislation on the lines of Madia act III of 1892 were adopted, the additional Estates which might thus be put under the Courts charge would be efficiently managed.

14. It may be noted that this plan of simply putting the owners of Encumbered Estates on the same footing as minors or incapacitated wards was proposed for this Presidency so long ago as 1875 - vide Section 6(f) of the draft Court of Wards bill communicated with Government order dated 21 July 1875. No 39 Leg and para 13. of the Select Committee's Covering report read with the same order.

15. Apart from the main objections to its principles which have been urged above, the Board has to submit the following remarks on individual Sections of the Bill.

Section 3

(1) There should certainly be some limitation to the first clause so as to make it clear that petty properties will lie outside the scope of the Bill. The public can have no interest in the maintenance of small estates. The Board would limit the application of the Bill to Estates with an annual rent value of Rs 10,000, determined as was proposed in section 6 of the draft Court of Wards Bill of 1875 above referred to, in the manner prescribed for the purpose of levying land cess under the Local Boards Act (Section 64 of Madras Act V of 1884).

(2) The application should be made through the Collector so as to give him opportunity for expressing his views thereon.

(3) When an estate is under the Court of Wards, application under this section should not be made except by the Court.

Section 8 (3) (a)

The Board considers this provision too sweeping and also like the remarks in para 8 above.

Section 11 (3)

The Board does not think it necessary to legislate for persons who do not hold direct under Government – See Remarks on Section 3 above.

Section 15

"determine the amount justly due to the several claimants."

It should be made clear whether this does or does not involve the intervening equity Jurisdiction supposed by the Board in its Remarks on the general provisions of the Bill. And the principles which are to guide the Collector in the important and delicate task of adjudication under this section and Section 16 should be laid down by law and not left to mere administrative enactment under section 31.

Section 20

Considering the finality of the "liquidation scheme" in regard to all claims against the estate, it ought, the Board thinks, to receive the sanction of Government, or an appeal to Government by any person aggrieved by it should be specially provided. Subsequent revision of the liquidation scheme to suit altered circumstances should also be provided for. Section 18 appears to cover only revisions before final sanction.

Similarly an appeal to the Board should be allowed against acts done under Section 21 and an appeal to Government against proceedings under section 22.

Section 27

When the next heir in the circumstances contemplated by this section is a minor, the Jurisdiction of the Court of Wards should be barred so long as the management continues.

Section 29.

As above remarked, considering the final character of the actions of the executive under this Bill, there should at least be an appeal to the highest executive authority – the Government – in matters of such moment as decisions under sections 14, 15, 16, 21 & 22.

All

All the Board's orders in regard to the general administration of the estate including the allowances fixed under section 11(4) should be final, and an intermediate appeal should be provided from the Manager to the Collector.

16. The Board has, through the courtesy of the Hon'ble Mr. Clements al Rao B. I. E., obtained a copy of a Bill which he proposed to introduce into the Legislative Council of India and which with the connected papers including the opinions of a number of representative native gentlemen, is herewith submitted to Government. viz with G. of I. Rev No.

That Bill, which goes on the lines advocated by the Board, viz. to allow important embarrassed estates to be placed by Government, at the request of the owner, under the management of the Court of Wards, is, the Board ventures to think, a much more modest, more workable and equitable measure than the proposed Government enactment, and if the Government

Government so wishes, the Board will be happy to submit remarks and suggestions thereon. It need only say here that the scope of section 9(3) would have to be restricted for the reasons set forth in para 8 above.

17. The Board's Second Member takes exception to the provision in section 3 of the Government Bill which allows an heir to invoke the interference of Government. He would restrict the power of application for management to the owner of the estate for the time being. The other Members consider that, if the main policy and principles of the Government Bill be admitted, there is no reason why the heir of an improvident land holder should not be allowed to invoke its aid.

(True Extract)

W. L. Wyl

Asst Secretary

To

The Secretary to Govt. Revenue Dept.

with 1 enclosure.

Revenue 1893 Dept

Board of Revenue
(Land Revenue)

MADRAS.

Current Number 6672

To

The Secretary to Govt
Revenue Dept

Read 6 Sept

Proceedings, dated 4 September 1893,
No. 509 Mis. / Routine. Rev Enclosures.

Subject.

Submitting to Govt
Board's remarks on
the Encumbered Estates
Bill.

For orders.

R.K.
5/9.

S. Mudr 7/9.

No. OF 1893.

A

BILL

TO

WHEREAS it is expedient to provide for the relief of proprietors of encumbered estates in the Presidency of Madras; It is hereby enacted as follows:—

Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Madras Encumbered Estates Act, 1894."

Short title.

2. "Collector" means the Collector of a district and includes an Agent to the Governor.

Definition.

CHAPTER II.

OF THE APPLICATION AND PROCEEDINGS THEREUPON.

3. Any Zamindar, Jagirdar, ~~Shrotriyamdar or Inamdar~~ holding land situate within the Presidency of Madras, or any person who would be sole heir or one of the heirs of such proprietor if he then died intestate

Act XX of 1881, section 4.

Application for the benefit of this Act.

and yielding an annual gross income of fifty thousand

may apply, in writing, to the Board of Revenue stating that such proprietor is subject to debts or liabilities other than debts due or liabilities incurred to Government or that his immoveable property is charged with debts or liabilities other than as aforesaid; and requesting that the provisions of this Act be applied to his case.

When any person entitled to make an application under this section is subject to any legal incapacity, such application

may be made on his behalf by his guardian or curator or the legally constituted administrator of his estate.

4. An application under section 3 shall be accompanied by a statement showing, as far as may be practicable,

How to be framed.

(*a*) the amount and nature of the debts due or liabilities incurred by the proprietor and of debts due to him; and

(*b*) the moveable property belonging to him other than that specified in the first proviso to section 266 of the Civil Procedure Code; and

(*c*) the immoveable property including any interest in joint immoveable property of or to which the proprietor is then possessed or entitled in his own right, or which he is entitled to redeem or to which he has reversionary right; and

(*d*) the gross income derivable from all such property, the charges thereon, and the net income or profits.

Act XX of 1881, section 6.

Such statement shall be verified by the applicant in the manner required by law for the verification of plaints, and if it contains any averment which the applicant knows or believes to be false or does not believe to be true, the applicant shall be deemed to have given false evidence within the meaning of the Indian Penal Code.

5. The Board of Revenue may, subject to any general rules which may be made by the local Government in this behalf, direct such inquiry as they may think necessary to be made by the Collector, or may dismiss the application, or recommend to the local Government that the request in the application may be complied with.

Proceeding of Board of Revenue thereon.

CHAPTER III.

OF THE ORDER OF MANAGEMENT AND EFFECT THEREOF.

» Act XX of 1881, section 8.

6. On receipt of such recommendation the local Government may pass an order (hereinafter called the order of management) that the provisions of this Act shall be applied to the case and that the property of the debtor shall be taken under management, and shall notify such order in the *Fort St. George Gazette* and in the Gazettes of the districts within which the immoveable property is situated. The order of management shall extend to all the property of the debtor of the kinds specified in clauses (*a*), (*b*) and (*c*) of section five and to all such property which may be acquired by or may devolve upon him during the continuance of the management and to all debts to which he is subject or which are charged on the whole or any part of his immoveable property on the date of the order, and to the amount of any loan which may be received from Government under this Act for the purposes of the management.

Order of management; to what it extends.

7. On publication of the order of management the Collector shall attach and take possession, by himself or by an officer deputed by him for the purpose, of all the property as aforesaid belonging to the debtor, and pending the appointment of a manager as hereinafter provided shall exercise in respect thereof the same powers as in respect of property attached and taken under management for the satisfaction of arrears of revenue.

Collector to assume possession.

8. On the publication of the order of management the following consequences shall ensue:— Act XX of 1881, section 9.

First, all proceedings then pending in any Civil Court in British India in respect of debts and liabilities due or incurred by the debtor shall be stayed; and the operation of all processes, executions and attachments then in force for or in respect of such debts and liabilities shall be suspended;

[e Effect of order of management.

Secondly, so long as the management continues no fresh proceedings, processes, executions or attachments shall be instituted in or issued by any Court in British India in respect of such debts and liabilities;

Thirdly, so long as the management continues the debtor and his heir shall be incompetent— Act VI of 1876, section 3.

(*a*) to enter into any contract involving him or them in pecuniary liability;

(*b*) to mortgage, charge, lease or alienate the property under management or any part thereof;

(*c*) to grant valid receipts for the rents and profits arising or accruing therefrom.

CHAPTER IV.

Appointment and Powers of the Manager.

[*New.*]

9. On the nomination of the Collector, the Board of Revenue shall appoint a person to be manager of the property of the debtor. Such manager shall, in the conduct of his duties, be subject to the control of the Collector and of the Board of Revenue, and may be suspended or removed by the said Board, which may in such case appoint a person to be manager in his place on a fresh nomination by the Collector. Every person appointed to be manager shall give security for the proper performance of his duty.

Appointment of Manager.

Act XX of 1881, section 10.

[*New.*]

10. Subject to the provisions of this Act, the manager shall, during the continuance of the management of the property, have all powers which the owner thereof might as such have legally exercised and shall receive and recover all rents and profits due in respect of the property under management. Provided that he shall obtain the sanction of the Board of Revenue for the sale of any of the moveable property taken under management, and shall not before the liquidation-scheme hereinafter mentioned has been sanctioned demise the immoveable property under management or any part thereof for any term exceeding two years to take effect in possession.

Powers of Manager.

Act XX of 1881, section 11.

11. From the sums received or recovered under section ten, the manager shall pay —

Manager to pay therefrom—

First, the costs of the management, including sums levied or charged under Act X of 1892 and the costs of necessary repairs;

costs of management and repairs,

Secondly, the Government revenue and all debts and liabilities for the time being due or incurred to Government in respect of the property under management;

Government revenue, &c.,

Thirdly, the rent (if any) due to a superior holder in respect of the said property or any part of it;

rent due to superior holder,

Fourthly, such periodical allowances as the Board of Revenue may from time to time fix for the maintenance of the debtor and his family;

allowance for maintenance of debtor,

Fifthly, the cost of such improvements of the said property as he thinks necessary and as are approved by the said Board.

cost of improvements, &c.

The residue shall be retained by the manager for the liquidation, in manner hereinafter provided, of the debts due and liabilities incurred by the debtor other than those so due or incurred to Government, and also for the repayment, either before or after the liquidation of such debts and liabilities, of any loan received from Government under this Act for the purposes of the management.

Residue how disposed of.

CHAPTER V.

Proof of Debts and Scheme for Liquidation.

Act XX of 1881, section 12.

12. On the publication of the order of management, the Collector shall publish in the *Fort St. George Gazette* a notice in English and the vernacular calling upon all persons having claims against the debtor, or the property under management, to notify the same in writing to the Collector within six months from the date of the publication.

Notice to claimants against debtor.

He shall also cause copies of such notice to be exhibited at the revenue kachahrís in the district in which the said property is situate and at such other places as he thinks fit.

Copies of notice to be exhibited.

Act XX of 1881, section 13.

13. Every such claimant shall, along with his claim, present full particulars thereof.

Claim to contain full particulars.

Every document on which the claimant founds his claim, or on which he relies in support thereof, shall be delivered to the Collector along with the claim.

Documents to be given up.

If the document be an entry in any book, the claimant shall produce the book to the Collector, together with a copy of

Entries in books.

the entry on which he relies. The Collector shall mark the book for the purpose of identification, and, after examining and comparing the copy with the original, shall return the book to the claimant.

Exclusion of documents not produced.

If any document in the possession or under the control of the claimant is not delivered or produced by him to the Collector along with the claim, the Collector may refuse to receive such document in evidence on the claimant's behalf at the investigation of the case.

Act XX of 1881, section 14.

Claim not duly notified to be barred.

14. Every such claim (other than claims of the Government) not notified to the Collector, within the time and in the manner required by such notice shall, except as provided in section nineteen, clause (*d*), be deemed for all purposes and on all occasions, whether during the continuance of the management or afterwards, to have been duly discharged:

Provision for admission of claims within further period of six months.

Provided that, when proof is made to the Collector that the claimant was unable to comply with the provisions of section twelve, the Collector may receive such claim within the further period of six months from the expiration of the original period of six months.

Act XX of 1881, section 15.

Determination of debts and liabilities.

15. The Collector shall inquire into the history and merits of every claim received under sections twelve and fourteen, and shall, in accordance with the rules to be made under this Act, determine the amount of the debts and liabilities (if any) justly due to the several claimants.

Act XX of 1881, section 16.

Power to rank debts and to fix interest.

16. If such amount cannot be paid at once, the Collector shall then proceed to rank such debts and liabilities according to the order in which they shall be paid, and to fix the interest (if any) to be paid thereon, respectively, from the date of the final decision thereon to the date of the payment and discharge thereof.

Act XX of 1881, section 17.

Scheme for liquidation.

17. When the total amount of the debts and liabilities (including those due and incurred to Government) has been

finally determined, the Collector shall prepare and submit to the Board of Revenue a schedule of such debts and liabilities, and a scheme (hereinafter called the liquidation-scheme) showing the mode in which it is proposed to pay and discharge the same, whether from the income proceeds of the property under management, or with the aid of funds raised under the powers hereinafter conferred, or partly in one of such ways and partly in the other.

Provisions of scheme.

Every such scheme shall further provide for the continuance of the payments to be made by the manager under section eleven, and for the repayment of the money (if any) which it is proposed to borrow from Government under this Act; and may provide for the improvement of the property under management either from the said income or with the aid of the funds raised as aforesaid, or partly in one of such ways and partly in the other.

Proceedings of Board of Revenue on submission of scheme.

Act XX of 1881, section 18.

18. The Board of Revenue may—

(*a*) as often as it thinks fit send back such scheme to the Collector for revision and direct him to make such further inquiry as may be requisite for the proper preparation of the scheme, or

(*b*) sanction any liquidation-scheme or any revised liquidation-scheme submitted to it, either as it stands, or subject to such modifications as it may deem expedient.

(*c*) in like manner, suspend a sanctioned liquidation scheme on the failing in any material particular by which the debtor is entitled.

Act XX of 1881, section 19.

Power to relinquish management.

19. At any time before it has sanctioned a liquidation-scheme under section eighteen, the Board of Revenue may, by an order published in the *Fort St. George Gazette*, direct that on a date fixed by such order the management shall be relinquished.

On the date so fixed—

(*a*) the management shall terminate;

(*b*) the owner of the property under management shall be restored to the possession thereof, subject to any sales or leases made under section ten;

(*c*) any residue of the proceeds of such sales or of the rents and profits of the said property retained under the last clause of section eleven shall be paid to him; and

(*d*) the proceedings, processes, executions and attachments stayed and suspended under section eight, and the debts and liabilities barred by section fourteen, shall revive.

In calculating the periods of limitation applicable to suits to recover and enforce debts and liabilities revived under this section, the time during which the management has continued shall be excluded.

CHAPTER VI.

OF THE PROCEEDINGS SUBSEQUENT TO SANCTION OF THE LIQUIDATION-SCHEME.

Act XX of 1881, section 20.

20. When the Board of Revenue sanctions the liquidation-scheme, it shall notify the fact of such sanction at such places and in such manner as the local Government may from time to time by rule direct; and thereupon—

Effects of sanctioning scheme.

1*st*, all proceedings, processes, executions and attachments stayed or suspended under section eight shall be for ever barred, and

2*nd*, every debt or liability due or owing to any person which was provable before the Collector shall be extinguished; and such person shall be entitled to receive under the liquidation-scheme the amount (if any) finally awarded to him under Chapter V of this Act in respect of such debt or liability.

Act XX of 1881, section 21.

21. If the property under management or any part thereof be in the possession of a mortgagee or conditional vendee, the manager, at any time after the liquidation-scheme has been sanctioned as aforesaid, may, by an order in writing, require such incumbrancer to deliver up possession of the same to him at the end of the then current revenue year.

Power to remove mortgagee in possession.

If such incumbrancer refuse or neglect to obey such order, the manager may, without resorting to a Civil Court, enter upon the property and summarily evict therefrom the said incumbrancer and any other person obstructing or resisting on his behalf.

Nothing in this section shall be held to affect the right of any incumbrancer to receive, under the liquidation-scheme, the amount (if any) awarded to him under Chapter V of this Act.

Act XX of 1881, section 22.

22. If the property under management or any part thereof be in the possession of any person claiming to hold under a lease dated within the three years immediately preceding the commencement of the management, the Collector, with the sanction of the Board of Revenue, may inquire into the sufficiency of the consideration for which the lease was given; and if such consideration appear to him insufficient may by order, at any time after the liquidation-scheme has been sanctioned as aforesaid, authorize the manager either to set aside the lease or to require the person so in possession to pay such consideration for the said lease as the Collector thinks fit; and in default of such payment the lease shall be cancelled.

Power to inquire into consideration given for leases.

Act XX of 1881, section 23.

23. Subject to the rules made under section thirty-one, the manager, after the liquidation-scheme has been sanctioned as aforesaid, shall have power to demise all or any part of the property under management for any term of years not exceeding twenty years absolute, to take effect in possession, in consideration of the payment to him of any fine, or without fine, and reserving such rents, and under such conditions, as may be agreed upon.

Power to lease.

Act XX of 1881, section 24.

24. At any time after the liquidation-scheme has been sanctioned as aforesaid, the manager, with the previous assent of the Board of Revenue, shall have power to raise any money which may be required for carrying out such scheme—

Power to raise money by mortgage sale or loan.

(*a*) by demising by way of mortgage the whole or any part of the property under management for a term not exceeding twenty years from the publication of the order of management; or

(*b*) by selling, by public auction or by private contract, and upon such terms as the manager thinks fit, such portion of the said property as may appear expedient; or

(*c*) by borrowing money from Government at such rate of interest as appears reasonable to the local Government.

Act XX of 1881, section 25.

25. The manager's receipt for any moneys, rents or profits raised or received by him under this Act shall discharge the person paying the same therefrom and from being concerned to see to the application thereof.

Manager's receipt to be a discharge.

Act XX of 1881, section 26.

26. When the debts and liabilities mentioned in the liquidation-scheme and the amount of any loan received from Government under clause (*c*) of section twenty-four, together with the interest (if any) due thereon, have been paid and discharged, the Board of Revenue shall publish in the *Fort St. George Gazette* a notice fixing a date for the termination of the management.

Termination of management.

On the date so fixed the management shall terminate, and the owner shall be placed in the possession and enjoyment of the property under management, or of such part thereof as has not been sold by the manager under the power conferred by sections ten or twenty-four, but subject to the leases and mortgages (if any) granted and made by the manager under the powers conferred by sections ten, twenty-three and twenty-four.

Restoration of owner.

Act XX of 1881, section 27.

27. If the debtor dies after the publication of the order of management and before the management has been terminated in either of the modes hereinbefore provided—

Death of debtor during management.

1*st*, the management shall continue and proceed in all respects as if such debtor were still living;

2*ndly*, any person succeeding to the whole or any portion of the property under management shall, while such management continues, be subject in respect of such property to the disabilities imposed by clauses (*b*) and (*c*) of section nine; and

3*rdly*, no Civil Court in British India shall, during the continuance of the management, issue any attachment or other process against any portion of the property under management for or in respect of any debt or liability incurred by any such person whether before or after his said succession.

Act XX of 1881, section 28.

28. When a person has been restored under section twenty-six to the possession of any property, no mortgage, charge, lease or alienation of such property, or of any part thereof, made by such person shall be valid as to any time beyond his natural life.

Mortgages, &c., made by restored jagirdar valid only for his life.

CHAPTER VII.

Of Appeal and Revision.

Act XX of 1881, section 29.

29. An appeal against any decision or order under sections fourteen, fifteen, sixteen and twenty-two, and imposing a fine or imprisonment in exercise of the powers conferred by section thirty-four, shall lie to the Board of Revenue, if preferred within six weeks from the date of such decision or order.

Appeal.

There shall be no appeal against the decision of the said Board on such appeal.

Act XX of 1881, section 30.

30. The Board of Revenue may, of its own motion or on the application of any person concerned, call for the proceedings in any case under this Act, and pass such order thereon consistent with the provisions of this Act as it thinks fit.

Power to call for proceedings and pass order thereon.

CHAPTER VIII.

Miscellaneous.

Act XX of 1881, section 31.

31. The Local Government may make rules consistent with this Act—

Power to make rules.

(*a*) to regulate the security to be required from subordinate officers under this Act;

(*b*) to regulate the procedure in all cases under this Act;

(*c*) for the guidance of officers enquiring into and determining on claims under Chapter V of this Act; and in particular as to the mode of taking account as between the claimant and the debtor and as to the allowance of interest (if any) on each of the principal debts and liabilities so determined, from the date on which it was incurred down to the date of the determination, and on the aggregate amount of such debts and liabilities from the date of the determination down to the date of payment, and as to the order of paying debts and liabilities and repaying any loan received hereunder from Government;

See Act XVI of 1882, section 12.

(*d*) for investing any moneys received or raised by the manager under this Act in any Government securities of British India and for the sale of such securities; and

(*e*) generally to carry out the provisions of this Act.

Such rules shall be published in the *Fort St. George Gazette* and shall thereupon have the force of law.

Act XX of 1881, section 33.

32. Every manager appointed under this Act shall be deemed a public servant within the meaning of the Indian Penal Code.

Managers to be public servants.

Act XX of 1881, section 34.

33. Every investigation conducted by the Collector with reference to any claim preferred before him under this Act, or to any matter connected with any such claim, shall be taken to be a judicial proceeding within the meaning of the Indian Penal Code.

Investigation to be deemed a judicial proceeding.

Act XX of 1881, section 35.

34. For the purposes of this Act, the Collector may summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents, by the same means and, as far as possible, in the same manner, as is provided in the case of a Civil Court by the Code of Civil Procedure.

Power to summon witnesses and compel production of documents.

Act XX of 1881, section 36.

35. No suit or other proceeding shall be maintained against any person in respect of anything done by him *bona fide* pursuant to this Act.

Bar of suits.

Act XX of 1881, section 37.

36. Nothing in this Act precludes the Courts in the Presidency of Madras having jurisdiction in suits relating to the succession to any immoveable property brought under the operation of this Act from entertaining and disposing of such suits; but to all such suits the manager of such property shall be made a party.

Saving of jurisdiction of Courts in Madras in respect of certain suits.

37. The jurisdiction of the Court of Wards shall not extend to ~~estates belonging to~~ properties of private persons subject to this act during the continuance of management thereunder.

New. *Bar of jurisdiction of the Court of Wards*

STATEMENT OF OBJECTS AND REASONS.

The absence in the Presidency of Madras of an Act providing for the relief of proprietors of encumbered estates by management of such estates by or under the control of Government officers has been felt by the classes concerned, who have prayed for the enactment of a law for this purpose similar to those which exist for other provinces. The present Bill is designed to meet this want. It is modelled generally on the Sindh Encumbered Estates Act, and as it is found necessary to bar the jurisdiction of Civil Courts throughout British India and to affect the operation of the Code of Civil Procedure and the Limitation Act without, as well as within, the Presidency, the proposed legislation is within the competence of the Council of the Governor-General alone.

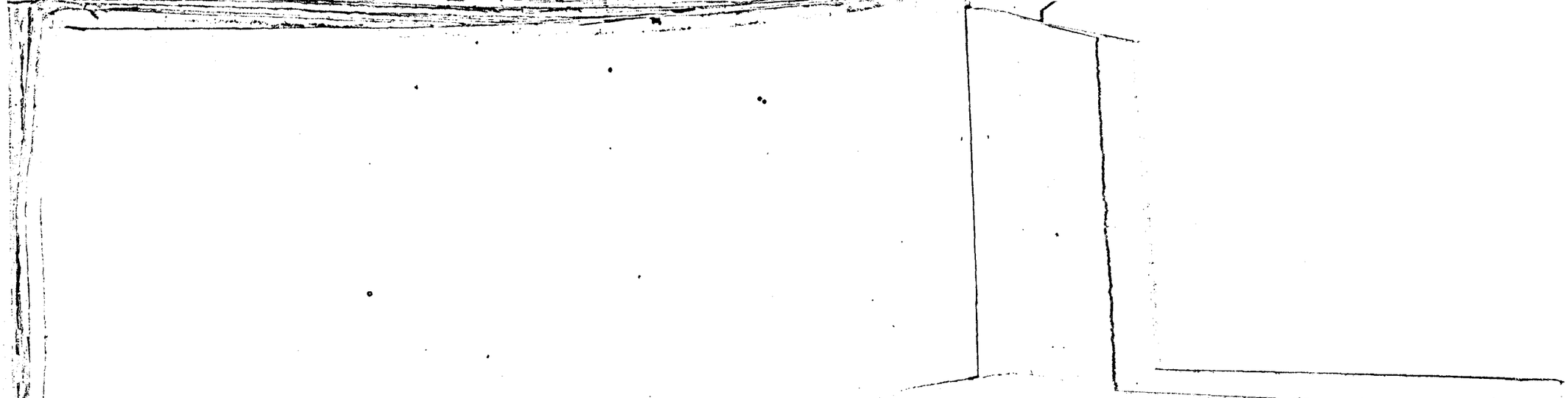
Revenue Board Office,
(Land Revenue),
MADRAS.
21-11 1893.

GOVERNMENT OF MADRAS
21 NOV 93
REVENUE DEPARTMENT

My dear Gibson

With reference to
recent conversation you had with
Arundel, & under his instructions,
I write to say that Ltrs 30-8-93
Secy to Govt & this
& 4-5-93 from this Deptt, were
Secy
both first, were Full Board papers
& future every page has which
represent the views of three - three

Please send revised Board
Standing Rule made by the Hon: Sir Henry
Stokes.



members will be awarded "Life Board"

Yours sincerely

W. S. Hughes

GOVERNMENT OF MADRAS

20/11/43

Thank you.

known to the Reconciled

x Editor Did they make

any alterations in it - I want to correct

it finally before it comes

out to-morrow if there is

time. Like another proof

Mark if no corrections

required

x. Final proof was sent to the D.M. on the 16th instant in box no. 1. R.V.P. 29/11

Done
R.V.L.
20th.

Nov 17/10.

Ordered.

Mr Lee is requested to have
printed the usual number
of Copies of the Council
Bill for printing in Gaelic
& English the proposed new Rules
& Orders of Court, under
the Education (Scotland) Act,
1908, & the Regulations &
Instructions of the Scotch Education
Department thereunder, and
to have the same ready
for the meeting of the Court
on Thursday the 24th inst.

Lord President
15/10/10

Nos connected with G.O. No 958 Rev
dd 7-11-1893.

REVENUE DEPARTMENT.

Current No. 6672/93.

Subject. re: Encumbered Estates Bill.

From B.P. No 509. Land Rev. dd 4-9-93 Dated 189.

FOR ORDERS.

The Board point out, in very forcible language, that the principle of the Bill involves very large restriction on the powers of the Courts & the transfer to executive authorities of functions of a judicial character. all which may be admitted. The ~~bill~~ proposed legislation is no doubt of a very exceptional and drastic character and it is legitimately a question for discussion whether policy requires legislation of the kind. The Board propose to substitute for a bill empowering the Court of Wards to take in charge heard estates under management under the conditions applicable to estates under wards bill. But legislation of this kind involves nothing in the shape of liquidation of the property, of marshalling the debts, or the claims of the creditors or of an arrangement for giving them a dividend on their claims such as can be given consistently with the salvation of the estate. In most cases this would give no advantage at all to the encumbered proprietor, except somewhat better management; he would have no protection whatever against his creditors; and the more rapacious or skilful of them would have to encounter no greater difficulty than at present in pushing their claims through the Courts and procuring the sale & annihilation under decrees. For the object in view - the salvation of estates - such legislation would be utterly futile & inadequate, and no boon at all to encumbered landowners. If it is desired to afford protection & help to this class nothing short of a measure of liquidation

Circulated -

L.H. 21/9

(3) I quite agree with all that is urged here against an extension of the Court of Wards powers to encumbered estates and in favour of passing the Bill under discussion. Unless some really drastic powers are granted, no possible good can result. But I take it we are all agreed that if this Bill were passed into law, it would only be allowed to be used in very exceptional cases, and in order to preserve large estates from being broken up. Sir A. Stokes says himself he would only apply it in "very rare cases." Under these circs I cannot see any objection to a limit being placed in the Bill as to the persons who may be permitted to have it applied to their estates, as it is not intended ever to permit it in the case of petty Khoiendars - all those gentry are - why not say so at once. It will at all events save the Board of Revenue a great deal of trouble for as the Bill stands at present - they may be inundated with applications from every description of insolvent landowner - and will possibly be at a loss to know which application they ought to enquire into, whereas if it was clearly laid down that no landowner paying less than 10-000 a year could in fact apply - all parties would be saved a deal of anxiety and trouble. I don't suppose any Govt would dream of considering the case of any E.S.T. smaller than this. Then why not say so, at once? I am afraid I cannot agree

of debt such as that provided in the bill will be also adequate. The Board in favor of say that in Madras, there is no law for legislation of the kind and that estates which cannot be rescued by careful management should not be saved at all.

But there are few cases in which estates already encumbered can be so saved. A composition of course with the creditors must be provided for if estates, involved as are for instance Kalahasti or Karvetnagar are to be saved. And it seems certainly better that under such provision all the creditors should get such dividend as the estate can fairly pay, than that under the ordinary scramble in the Courts some (probably the most ominous) should get all & the rest nothing.

If there is to be a law for the relief of encumbered Estates, I should certainly prefer to make it a strong & effective one and none can be so which does not provide for compulsion & summary settling of claims & liquidation by dividend as in insolvency. The question of policy is that for decision. I confess I am not very strongly in favour of any bill and if one is to, I would apply it only in very rare cases. Such cases may however arise even in Madras; and I certainly prefer if there is to be a bill at all, that it should be adequate to the purpose.

On the Board's suggestions of details I have noted briefly in the margin of the printed Paper.

Ulloa
29 Sept

(2) Hon. friend Hon. Law [illegible]
[illegible]
(3) H.E. Lord Wenlock's note of 2 Oct
(4) Sir Raymond Stratton's note of 4 Oct
(5) Hon. Sir Charles Turner's note of 4 Oct
(6) H.E. Commander-in-Chief's note of 5 Oct
(7) Hon. Sir Charles Turner's note of 5 Oct
(8) Hon. Sir Henry Stokes' note of 6 Oct
(9) Hon. Mr. Justice Muthusami Iyer's note of 6 Oct
(10) Hon. Mr. Justice Shephard's note of 6 Oct
(11) Hon. Mr. Justice Boddam's note of 6 Oct
(12) Hon. Mr. Justice Parker's note of 6 Oct
(13) Hon. Mr. Justice Best's note of 6 Oct
(14) Hon. Mr. Justice Subramania Iyer's note of 6 Oct
(15) Hon. Mr. Justice Davies' note of 6 Oct
(16) Hon. Mr. Justice Wilkinson's note of 6 Oct
(17) Hon. Mr. Justice Bhashyam Iyengar's note of 6 Oct
(18) Hon. Mr. Justice Collins' note of 6 Oct
(19) Hon. Mr. Justice Benson's note of 6 Oct
(20) Hon. Mr. Justice Parker's note of 6 Oct
(21) Hon. Mr. Justice Best's note of 6 Oct
(22) Hon. Mr. Justice Subramania Iyer's note of 6 Oct
(23) Hon. Mr. Justice Davies' note of 6 Oct
(24) Hon. Mr. Justice Wilkinson's note of 6 Oct
(25) Hon. Mr. Justice Bhashyam Iyengar's note of 6 Oct
(26) Hon. Mr. Justice Collins' note of 6 Oct
(27) Hon. Mr. Justice Benson's note of 6 Oct

FOR ORDERS.

Bill for Encumbered Estates Bill.

The Hon. Sir Henry Stokes, K.C.S.I.
The Hon. Mr. Garstin, C.S.I.
His Excellency the Governor

with the hon. Mr. Garstin in thinking that this Bill can be properly carried out through the Madras Legislative Council for reasons we have been already stated - but I think Sir H. Stokes would be what our hon. colleague has written on this point - and if he would kindly bring the papers to next Council, we could discuss this and the other points & finally settle the matter.

W
Lord.

(1) I agree to limit the operation of the Act to zamindaris & Jaghiredaris having a gross income yielding an annual income of 50,000 Rs or upwards.
Being the Council.

Ulloa
4 Oct.

2/ Dec
HC 10/10/93

In Council - 11/10/93.

Ulloa

* in the Bill of Sept 4 1893 No 509.

* in his note of 24 Sept 93

The Board of Rev. have taken strong objection to the chronic of the Bill - I consider that objection for such legislation as necessary for in the Presidency law ordinary is to be anticipated & that it is certainly desirable that the encumbered estates of proprietors & individuals should be saved from ruin, they consider that if they could be successful the management they should not be saved at all. The Bill is avowedly & practically an Encumbered Estates Act. My hon. Colleague, Sir H. Stokes, admits that it is a very exceptional and desperate remedy but considers that any thing that promises even a chance of relief should be tried. He proposes a Bill like ours. The proposal which is adequate to the purpose, but thought he admits that if the Bill was to be passed he would apply it only in very rare cases. I do not object to the drastic character of the Bill, because I hold that it should be applied only in the case of large estates where it is clearly desirable on grounds of public policy, to save an ancient estate from being entirely dissipated & broken up in order to discharge the debts of its owner. For the purpose of settling the terms of a liquidation Act will be necessary - I see

is expended for such relief
in terms of the Private Bill
Legislation Debtors Liquidation
of 1869 - on the occasion
of special Commissioners appointed
to make a list of the debts,
& the creditors assenting to the
advantageous liquidation
have bound by their own consent
in writing to abide by the award,
which by far a large
amount of debts had paid
& the much smaller amount
which, foreign, domestic, agreed
with the Board in their objections
to the clauses of the Bill &
upon with them in some of
their objections & its details.
When the Bill was originally
drafted it was applicable to all
classes of land proprietors
& in which a proposal by a
class opposition, their law
Lordships' Committee struck out
the words specifying those who
could propose a scheme for
arrangement & agreed with the
Bd in thinking that the
Bill should be clear that
only proprietors lie within
scope of the Bill. Also
objecting fixing the form
duration - to apply the Bill
to large and small estates
alike - by the Colleagues
the Bd. Elder in his note of
Sept 4th in opinion that
considering the distribution of
property & debts in the
whole probably right something
to meet exceptional cases in this

This case is hardly a precedent.
The funds administered under that
Act were not the property of the
debtors but were allotted by Govt
as part of a Political settlement
1869

See 6 of the Bill says: -

"The order of management shall extend to
- - - - all such property which may be
acquired by or may devolve upon him (the
debtor) during the continuance of the management"
This wd cover this class of cases - if this is
what the Board refer to.

Board are of the opinion that the liquidation
can & upon the management
actually commenced according to
the rules to be framed under Sec.
26 that such a contingency
might occur - at least upon
this point the Bd would like

Legislature can withhold
& the same time add that
the Commissioners may relieve
afforded by Statute & denied by
the Landowner - I think the Board
supply a reason - in the case of
public concern as to
circumstances of private estates -
Even before the expulsion of policy
the Act a landowner with an income
of £500 pr annum shd be entitled
as such a claim to a landowner
stock. Yet the Bill as it
does includes all landowners
whatsoever - I think
is a mistake.
Also upon with the Bd that the
Bill wd not legislate for persons
who do not possess debts under £500.
I think also that the suggestion of
the Commissioners of the
liquidation scheme should be
one which provide for, is a specific
one - the income and estate of
right, during the process of liquidation
and in for add. property - by addition
succession, or otherwise, & that the
one income with the for liability
upon of his debts - I think is the
I understand the Bd's views & the
suggestion.
The Board have noticed the
Retirement of Private Commissioners
but they cannot come to be upon
both points - In the first place,
it is not correct to say that the
present Bill is designed & must
to work that it is left by it to the
discretion for the management
of encumbered estates by or under
the control of Commissioners. The
Board wish to enable the Govt to

Ethick the Crown of estates from this debts by process of liquidation. Hoping to obtain any advantage of this delay in

Not necessary
11/11

Nor is it necessary, in my opinion, that the Bill should have passed the Legislative Council, as by Regs. the Constitution of the Madras Legislative Council - and if this is not necessary, then, by just parity of reasoning, it will be better to pass the Bill in the Local Councils, where it will be discussed with much greater ease than in the Supreme Council; and to the most greater personal interest, will likely naturally be taken in it. Whereas the Hon'ble Mr. P. Clinton Rees proposed to introduce an Enactment into the Bill, that the Supreme Council should not pass any Acts affecting the Rights & Remedies of Parties, & reasons why this should be necessary to save the jurisdiction of Civil Courts throughout British India & to avoid the question of the Cod. of Civil Procedure & Limitation Act being, as well as within, the Presidency towns. In my opinion, it is expedient to save the jurisdiction of the Courts in the Madras Presidency especially that of the other Courts in India can of course decree, except the Madras Courts, if the jurisdiction of the latter is

It enacting is necessary in my opinion. If the jurisdiction of Courts outside the Presidency were not barred, there would be nothing to prevent the estate being attached & sold under decrees of such courts.

11/11

Even if this argument is sound, which I doubt, then would still be an indirect bar to outside decrees, & this council has no power to bar such decrees indirectly than directly. Nor

The Bill does not establish any such limitation. It simply allows the operation of the ordinary Limitation Law

Nor

So long as the estate is under management - there is a period of limitation

HMS

barred in Court in Madras, his debts event any process in any Court against any estate of his in any part of India in which the Bill is to be applied, which is to come into operation after the law of limitation as respects actions brought by or against him shall have come into force in such part of India, provided that nothing in this Act shall be construed to extend to any suit or proceeding which may be pending at the time when this Act shall come into force in such part of India. Any limitation provided in the Bill would be suspended by the Limitation Act, which would then be in force in all Courts in India. Then some time, therefore, the provisions of the Bill would be introduced into the Madras Council - Lic: 59 Geo: Council & Act of 1892 the Indian Councils Act of 1892 so requires that the previous sanction of the Governor General should be obtained to the passing by the local Legislature of any provision in India of any Act passed or amended, as to that Province, by the Council or a regulation made by any authority within before a year after the passing of the Act of 1892 [illegible] any other authority in India than the local Legislature. Whereas, by the substitution of the words 'Province' for 'Presidency' & the words 'or the Province' for 'do' as they stand now, the words 'do' is so altered as to read 'there is no alteration' in Sec: 42 of the Indian Councils Act of 1861 - viz the Bill under discussion does not propose to amend or alter any Act passed by the Govt of India - Govt would be

6

Some of the provisions of the Bill tend to affect the operation of one of those laws, namely, the Civil Procedure Code - viz. the first part section 11 the passing of the Bill by the Local Council & think it can be passed by the Council. Govern. Coding

6 the enlargement of the Local Councils it is, I think, a matter for consideration whether all Local Acts hereafter in future be passed by the Local Councils under Sec. 5 of the Councils Act 9.92 -

30/9/93

5

71

Minute by the Hon. J.ʳ H. GARSTIN, C.S.I.

The Encumbered Estates Bill.

When the Honorable Mr. Chentsal Rao proposed to introduce a Bill into the Viceregal Legislative Council for the purpose of dealing with encumbered estates, his offer was declined, not because his Bill was not as drastic as the present one, but merely because the Members of the Madras Government were unanimously of opinion that it was better that an Encumbered Estates Bill for Madras should be introduced into the Local Council where it would be more fully discussed than in Calcutta. Now that the present Bill has been drafted, however, my Honorable Colleagues consider that it is necessary (1) to bar the jurisdiction of the Civil Courts throughout British India and (2) to affect the operation of the Code of Civil Procedure and the Limitation Act without, as well as within, the Presidency, and that, therefore, the proposed legislation is within the competence of the Council of the Governor-General alone.

If the view taken by my Honorable Colleagues is held by the Government of India to be correct, that Government will, no doubt, take measures to introduce a Bill into the Viceregal Council, but I do not think such a step is necessary, and if it is not necessary, I consider it would be decidedly preferable to have the Bill passed in the Local Council. Indeed, it seems to me that with the enlarged Local Councils all local legislation should be dealt with locally in them after the previous assent of the Governor-General in Council has been obtained under section 5 of the Councils Act of 1892, whenever necessary.

My reasons for thinking that it is not necessary to have the Bill passed in Calcutta are—

(1) that it is not necessary specifically to bar the jurisdiction of all Civil Courts throughout India;

(2) that the operation of the Code of Civil Procedure and of the Limitation Act need not be directly affected outside the Presidency, and that, so far as it may be necessary to affect them indirectly, this can be done by an Act of the Local Legislature with the previous consent of the Governor-General in Council.

I consider that, as the Civil Courts of the Madras Presidency alone have jurisdiction therein, if any Court in any other part of India is moved to issue any process against the person or property of any land-owner whose estate is under management under the proposed Bill, such Court will be unable to execute such process if the jurisdiction of all the Madras Civil Courts is barred, because no Court outside the Presidency can execute any process inside the Presidency except through the Madras Courts and that this barring can be effected if the Bill is passed into law by the local Legislative Council. Moreover, under section 8 of the Bill, once an order of management has issued, the estate-owner and his heir become ~~practically~~ civilly dead and incapable of entering into any contract involving him or them in pecuniary liability,

so that there is no risk of prospective liabilities being incurred by either of them anywhere while the estate is under management, while in respect of previously existing liabilities, the creditors outside the Presidency would be on exactly the same footing as those within it as regards the liquidation of their claims.

Next, the effecting of the provisions of the Civil Procedure Code & Limitation Acts, seems to be by much the same thing as having the jurisdiction of the Courts above India, and I think that, under sec. 803 the Indian Councils Act of 1892, the local Legislature of Madras has power to repeal or amend, so far as the Province of Madras is concerned, either enactment, if the Govt. Genl. in Council gives his previous consent to such a course, & if this is so, then, it is, I think, clear that said Legislature may, with the previous sanction of the Govt. Genl. in Council, modify or repeal the provisions of either enactment, so far as they may be found inconvenient in respect of the present Bill.

20/III/93

Note

(2) Orders are requested regarding the amendments to be made.

(1). Sec. 3. whether the word "gross" is to be inserted before 'income' in the addition made in this section.

(2) Sec. 3 (3). The Hon. Sir Henry Stokes has noted "yes" on the Board's suggestion that when an Estate is under the Court of Wards, application under this section should not be made except by the Court

For orders as to whether a clause to the above effect is to be added. If the word in the fourth line of the last clause of this section were "shall" instead of "may" no addition would then seem to be necessary.

(3) Sec. 11. Thirdly. Whether this clause is to be omitted with reference to the Hon: Member's remark on the B.P. to the effect that this provision will probably not be required in practice.

I have amended the copy of the Bill in Go. Library 93 No 732. I find no other in the file.

Mss 24 Oct

This would apparently bring the case, since under Reg. V of 1804 the Court of Wards appoints guardians - Mss 23/10 I think so.

Is this clause to be omitted?

I think it should be retained. The Bill extends to all the property of a proprietor & cases might occur where such proprietor had, besides the principal estate entitling him to the benefit, minor properties charged with the payment of rent or other dues to a superior holder. There is precisely the same reason for the provision in the case of Minors as in that of Lunatics, the danger of the Act being applied in order to subject such properties to

Madras.

(4) Sec. 21. Whether this Section is to be added to the Sections named in sec. 29 with reference to the Hon. Member's remark that an appeal to the Board may be allowed against acts done under this Section.

Govt. to consult Board.

LG

MS

(5) Sec. 27 Whether a clause is to be added to this Section to the effect that "when the next heir in the circumstances contemplated by this Section is a minor," the jurisdiction of the Court of Wards should be barred so long as the management continues.

MS. Board points duties of Collectors & Govt.

It would be better to add a section in the miscellaneous chapter as follows:

37. The jurisdiction of the Court of Wards shall not extend to the estates made subject to this Act, during the continuance of a management thereof.

Cases might occur when the proprietor as well as the heir might be a minor.

P) Is the jurisdiction of the Court of Wards to be barred only in the case of a minor?

(6) Whether a provision is to be inserted giving power to the Bd. to revise a liquidation scheme once sanctioned under Sec 18, which revision is called for by subsequent events, such as devolution of additional property on the debtor. Please see the Hon. Mr Sastri's remarks on this point at page 3 of this note.

I think this is intended.

MS 23/10

to sections 18 addl.

Govt. (c) as in like manner, revise a sanctioned liquidation scheme on the failing in of any provision to which the proprietor-cum-debtor is entitled.

MS

Pl. Abhart
1/11

C. No. 6672 of 93.

Encumbered Estates' Bill

C. of G. 7 Nov. 1893, Nos. 958 & 959
Hon. Sir H. Stokes' Nos. 41 & 42

Please see note within - asking for instructions on certain points -

H.H. 23/10.

Note: Proof of the Hon. Mr's Minute will be submitted when received from the Press.
R.H.
31/10

22/10 D-24/10 C 1/11 R 7/11

abstract
full

Read also Minute of the Hon. J. H. Garstin
C. S. J. of 15th Oct. '93

Read again G.O. of 16-8-93 No. 732
Read Cas. 6672 of 93.

G.O. of 7 Nov. 1893, No. 958.

With its Proceedings above the Board of Revenue submits its remarks on the Encumbered Estates' Bill which was referred for its opinion in G.O. of 16 Aug. 93 No. 732.

2. The Board objects to the principle of the Bill, which as it points out, involves a restriction of the powers of the Courts and the transfer to the executive authorities of functions of a judicial character.

3. Its own view is that no case for legislation of this character exists in this Presidency; that estates which cannot be saved by careful management should not be saved at all, and that accordingly it would suffice to legislate on the lines of India Act IV of 1892 with a

view to empower the Court of Wards to take encumbered Estates under management under the conditions applicable to Estates under wardship. But the Govt considers that careful management alone cannot save estates which are at all heavily encumbered: that the Board's scheme of legislation cannot help proprietors of such estates in as much as it involves nothing in the shape of liquidation ~~of the property~~, and it will not prevent creditors from pressing their claims through the Courts and getting the Estates sold in satisfaction of decrees: and that the only effectual way of helping an encumbered proprietor and saving his estate from annihilation, will be to provide for a composition of some sort with his creditors and marshalling of their claims and for liquidation by dividend as

~~in practice~~. A law of this character will be applied only in very rare cases — in cases in which there ~~may~~ exist special reasons for putting the Act in force; and as cases of this nature may arise in this Presidency, H.E. the Governor in Council deems it expedient to ~~have~~ a law which will adequately meet the requirements of such cases. He resolves accordingly to forward the Bill under consideration to the Govt of India, with the request that steps may be taken to (~~put it into force~~ ~~it passed into law~~) in the Imperial Legislature Council

introduce it into?

3. As it is intended to apply the proposed legislation to large estates only, it will be ~~factually~~ provided in Sec. 3 of the Bill that application for putting the proposed Act in force will not be received unless the Estate in respect of which

it shall be applicable only to the Estate of Zamindars & Jaghirdars with an annual ~~income~~ from land of Rupees 50000 & upwards.

the

the application is made yields an annual gross income of fifty thousand rupees or upwards. The Bill will be amended also in certain minor particulars with reference to some of the suggestions made by the Board.

4. Ordered that the following letter be despatched to the Govt of India.

M. 23/10

No. 959

To the Board of Revenue (Land Rev.) copy to the Legislative Dept.

To Legis Dept

The Secretary to the
Govt of India.
Home Dept.

Sir,

I am directed by H.E. the Governor in Council to forward herewith the draft of ~~an Encumbered Estates~~ a Bill for this Presidency, and to request that steps may be taken to pass it under Supreme

taking encumbered estates in

Please see item (4) in the minute above. P.V.R.

G.O.J 10.7.93 No. 606
G.V.J 16.8.93 No. 732
G.O.J (Gov. Gaz. 1893, Pt. 958, Con C. No. 6672 of 93)

P on C. No. 6672.

Legislature Council as early a date as practicable. The circumstances under which the Bill came to be prepared will appear from the marginally noted Progs of this Govt of which copies are enclosed, and I am to invite attention to paras. 2 & 3 of G.O.d 7th from which it will be seen that it is the intention of this Govt to apply the proposed legislation in respect only of large estates and in cases in which special reasons may exist for putting the law in force.

2. It will be seen from the Statement of Objects & Reasons annexed to the Bill that it is modelled generally on the Encumbered Estates Act, and that as it proposes to bar the jurisdiction of Civil Courts throughout British India and to affect the operation of the Code of Civil

Civil Procedure and the Limitation Act, without, as well as within the Presidency, H.E. the Govr in Council considers that the proposed legislation is within the competence of the Council of the Govr-General alone.

3. I am however to point out forward a copy of a minute by the that the Hon. Mr Gaster has recorded a minute on the subject in which he has taken the view intends that the object aimed at in the proposed legislation can be secured without specifically barring the jurisdiction of all Civil Courts throughout India and without directly affecting the operation of the Code of Civil Procedure and of the Limitation Act outside the Presidency and that even if the jurisdiction of the courts outside the Presidency has to be barred in the manner provided in is the Bill, it should be competent for the Legislature local

local Councils to pass the proposed measure legislation, and all local legislation of this character after the previous assent of the Governor-General in Council has been obtained under sec. 5 of the Indian Councils Act of 1892.

R. V.
2-1/10

H 22/10.

H 4/1/

Note