

Revenue (1897) Department.

PRESS SERIES.

G.O., No. 367

DATED 20th May 1897.

[Despatch Abstract.]

Bill to consolidate and to amend the law
relating to the Court of Wards.

Letters from the Government of India expressing its views regarding the enlargement and improvement of the existing law, under which Provincial Courts of Wards are constituted, commended to the Board of Rev. with the request that the draft—in the Madras Presidency, may be revised and resubmitted to Govt.

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

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Part III—Managers and Guardians.

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No. — of 1893.

A
BILL

TO

*Consolidate and amend the law relating to
the Court of Wards.*

1. This Act may be entitled the Madras Court of Wards Act, 1894.
Short title.
- It extends to the Presidency of Madras exclusive of the Presidency town.
Extent.
2. Madras Regulations V of 1804 and X of 1831, and Madras Act XXI of 1855, are hereby repealed.
Laws repealed.
3. In this Act, unless there is something repugnant in the subject or context:
Definitions.
"The Court" means the Court of Wards.
"Ward" means a person who has been made a ward of Court under sections 12 and 13.
"Minor" means a person who, under the provisions of the Indian Majority Act, 1875, as amended by the Guardians and Wards Act, 1890, has not attained majority.

M. Bill I of 1875, section 1.
B. Act IX of 1879, section 1.

M. Bill I of 1875, section 2.
B. Act IX of 1879, section 2.

M. Bill I of 1875, section 5.
B. Act IX of 1879, section 3.
C. P. Act XVII of 1885, section 3.

4. The Court shall consist of the members of the Board of Revenue.
Court of Wards.

M. Reg. V of 1804, section 2, paragraph 1.
N. W. P. Act XIX of 1873, section 193.
M. Bill I of 1875, section 3.
B. Act IX of 1879, section 5.

Part I—Disqualified Proprietors.

5. For the purposes of this Act, the following persons shall be deemed to be disqualified for the management of property:—
Disqualification.
(a) Females declared by Government incompetent to manage their property.
(b) Persons declared by the Court to be minors.
(c) Persons adjudged by a competent Civil Court to be of unsound mind and incapable of managing their affairs.

M. Reg. V of 1804, section 2, paragraph 1.
N. W. P. Act XIX of 1873, section 294.
M. Bill I of 1875, section 4.
B. Act IX of 1879, section 6.
C. P. Act XVII of 1885, section 7.
B. Act IV of 1892, section 3.

(d) Persons who are, in the opinion of Government, rendered incapable by physical defect or infirmity of managing their property.

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

6. Whenever the sole proprietor of an estate is, or all the joint proprietors of an estate are, disqualified under section 5 and own land in respect of which annual revenue amounting to Rs. 1,000 is payable to Government, the Court of Wards, with the previous consent of Government, may control and superintend the persons of the said proprietor or proprietors or their property or both; and also the person and property of any minor member of the family of such proprietor or proprietors.

Such persons are said to be subject to the jurisdiction of the Court.

Provided that no person, who is a member of an undivided Hindu family, some member of which is not disqualified, is subject to the jurisdiction of the Court; but if all the members of such family are disqualified, and they own land in respect of which annual revenue amounting to Rs. 1,000 is payable to Government, they will all be subject to the jurisdiction of the Court, until one of them ceases to be disqualified.

Provided also that the Court shall not be empowered to take charge of the person of a proprietor disqualified under clause (e) of section 5.

7. Whenever any District Collector has reason to believe that any person in his district has become subject to the jurisdiction of the Court, he may make such inquiry into the circumstances as he deems necessary.

8. Whenever the District Collector receives information that the proprietor of an estate in his district paying Rs. 1,000 in annual revenue to Government has died, leaving a minor heir or minor heirs, he may forthwith take such measures as he considers necessary for the protection of such minor or minors and their property.

M. Reg. V of 1804, section 2 paragraph 4.
M. Bill I of 1875, section 6.
B. Act IX of 1879, section 7.
C. P. Act XVII of 1885, section 6.
B. Act IV of 1892, section 2.

M. Bill I of 1875, section 8.
B. Act IX of 1879 section 27.

M. Bill I of 1875 section 9.
B. Act IX of 1879, section 29, paragraphs 1, 2, 3 & 4.

Such Collector may call on any other District Collector, in whose jurisdiction any such minor or any such property may be to take charge of the same, and thereupon such District Collector shall have the same powers with respect to such minor and such property as are conferred by this section on the first-named District Collector.

9. If the property is not afterwards taken charge of by the Court, all expenses incurred by a District Collector, acting

Recovery of expenditure. under section 8, shall be recoverable from the owner of such property, or the person whom the Collector shall find to be in possession of such property, and shall constitute a demand under Madras Act II of 1864, or any similar Act for the time being in force.

10. If, either upon the inquiry made under section 7 or otherwise, the District Collector has reason

Report by Collector. to believe that any person in his district has become subject to the jurisdiction of the Court, he shall forthwith submit a report to the Court, setting forth all the material circumstances of the case, and nominating a manager and guardian if that seems to him desirable.

11. After considering the report, the Court, if the proprietor is disqualified under section 5 (a), may decide that she shall be left in charge of her property; otherwise it shall submit the case with its recommendation for the orders of Government, but pending such orders all instructions issued by the Court on receipt of the Collector's report shall be binding.

12. Government shall then direct whether the disqualified person or persons and their property shall be taken charge of by the Court, and, if it so directs, they shall thereupon become wards of Court, and be subject to the control of the Court.

13. Government may, at any time, make any person, who is subject to the jurisdiction of the Court, a ward of Court, notwithstanding that no report with regard to him has been submitted by the District Collector to the Court, or by the Court to Government, or notwithstanding that when such

B. Act IX of 1879, section 29, paragraph 5.

M. Reg. V of 1804, section 3, paragraph 1, and section 8, paragraph 2.
M. Bill I of 1875, section 10.
B. Act IX of 1879, section 27.

M. Reg. V of 1804, section 3, paragraph 2.
M. Bill I of 1875, section 12.

M. Reg. V of 1804, paragraph 3.
M. Bill I of 1875, section 12.

M. Reg. X of 1831, 2 (2).
M. Bill I of 1875, section 14.
B. Act IX of 1879, section 28.

person first became subject to the Court's jurisdiction, he was not made a ward of Court.

PART II—THE COURT.

B. Act IX of 1879, section 36, paragraph 1.

14. Whenever any person has been made a ward under section 12 or 13, the District Collector of every district where any part of such ward's property may be situated, or any person authorized by him in writing in that behalf, shall take possession of all property of such ward, and place under proper custody such portion thereof as he may deem necessary.

And, unless the ward is disqualified under section 5 (e), the District Collector shall also take charge of the person of such ward.

B. Act IX of 1879, section 36, paragraph 2.

15. (a) Any such Collector or person authorised as aforesaid may, in case he has reason to believe that any account, paper or other property is in any room, box, or receptacle within any house in the actual possession of such ward, break open the same for the purpose of searching for such account paper or property.

(b) Any such District Collector may also order all persons in the employ of such ward, or, if the ward derives his title from a deceased proprietor, all persons who were in the employ of such proprietor to attend before him.

B. Act IX of 1879, section 37, paragraph 1.

B. Act IX of 1879, section 37, paragraph 2.

(c) Any such District Collector may order any person to deliver up any accounts, papers or other moveable property belonging to the ward, or any accounts or papers relating to such ward's property, which the Collector has reason to believe are in such person's custody.

(d) And may order all holders of tenures and under-tenures on the ward's property to produce their titles to such tenures and under-tenures.

B. Act IX of 1879, section 37, paragraph 3.

M. Bill I of 1875, section 42.
B. Act IX of 1879, section 8.
C. P. Act XVII of 1885, section 26.

16 (a) Whenever the circumstances of any ward, of whose property the Court has taken charge and who is a proprietor disqualified under section 5 (a), (b), (c), or (d), become such that the Court would not have taken charge of him or his property, if he

were not under charge already, the Court shall be bound to release from its charge such person and such property.

(b) And in any case in which the Court has taken charge of the property of a person disqualified in section 5 (e), it may, with the previous consent of Government, at any time withdraw from such charge, or 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 charges upon the property or any part thereof, together with all interest due thereon, have been discharged.

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

17. Whenever any proprietor or proprietors of whose property the Court has taken charge, cease to be subject to the jurisdiction of the Court, but some of the members of their family or families remain disqualified by minority, the Court may retain charge of the estate during the period of the disqualification of such members of the family;

and in case any person entitled to such 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.

Provided that nothing in this section shall apply to undivided Hindu families.

18. The Court may at any time, with the previous consent of Government, withdraw from the control and superintendence of any person or property, and such person shall thereupon cease to be a ward.

19. The Court may at any time, with the previous consent of Government, resume the control and management of the person and property of any individual who has been a ward of Court, so long as such individual remains subject to the jurisdiction of the Court.

20. When the Court has taken charge—

(a) It may, through its manager, do all such things requisite for the

B. Act IV of 1892, section 5.

B. Act IV of 1892, section 7 (modified as regards the first part).

M. Bill I of 1875, section 15.
B. Act IX of 1879, section 9.
C. P. Act XVII of 1885, section 26.

M. Bill I of 1875, section 16.
B. Act IX of 1879, section 9.

M. Reg. V of 1804, section 2, paragraph 2.
N. W. P. Act XIX of 1873, section 203.
B. Act IX of 1879, section 14.
C. P. Act XVII of 1885, section 14.

proper care or management of any property of which it may have taken charge, as the proprietor, if not disqualified, might do for it; and

(b) It may, through the guardian, do all such things in respect of the said ward, as might be done by a guardian appointed under the Guardians and Wards Act, 1890; and may allow, for the support of the said ward and his family, such monthly sum as it thinks fit (if any), with regard to the rank and circumstances of the parties.

(c) It may from time to time order such establishment to be entertained, and expenses to be incurred, as it shall consider requisite for the care and management of the persons and properties under charge, for superintendence, for the audit of accounts, and generally for all the purposes of this Act, and may order that such expenses, inclusive of salaries, gratuities and payments on account of the leave allowances of such establishments, be charged against any one or more properties for the purpose of which such establishments are or have been entertained, or such expenses have been incurred.

21. The Court may, in respect of such of the establishments and expenses referred to in section 20 as are in its judgment of a general nature, direct that they shall be met by a general contribution from the properties in charge of the Court, to be borne in such manner and in such proportions as the Court may from time to time direct.

22. The Court may sanction the giving of leases or farms of the whole or any part of the property under its charge. It may direct the mortgage or sale of any part of such property, and it may direct the doing of all such other acts as it may judge to be most for the benefit of the property and the advantage of the ward.

23. The Court may make such orders as to it may seem fit in respect of the custody, education and residence of a minor ward, and such minor members of the ward's family as are under its charge,

B. Act IX of 1879, section 22.

B. Act IX of 1879, section 16.

B. Act IX of 1879, section 17.

M. Bill I of 1875, section 20.
B. Act IX of 1879, section 18.
C. P. Act XVII of 1885, section 18.

B. Act IX of 1879, section 21.

and in respect of the custody and residence of any ward, not being a minor, whose person is in charge of the Court.

24. The Court may exercise all or any of the powers conferred on it by this Act through the District Collectors in whose districts any part of the property of the disqualified proprietor may be situated,

Powers may be exercised through or delegated to Collectors, &c.

or through any other person whom it may appoint for such purpose ;

and may from time to time delegate any of its powers to such District Collectors as aforesaid, and at any time revoke such delegation.

25. An appeal shall lie from every order of a District Collector under this Act to the Court.

Appeals to Court.

26. All orders or proceedings of a District Collector under this Act shall be subject to the supervision and control of the Court, and the Court may, if it thinks fit, revise, modify, or reverse any such order or proceeding, whether an appeal is presented against such order or proceeding or not.

Supervision by Court.

27. Unless the Court otherwise directs, all money received by the Court or its agents, on account of the property of any ward, shall be employed in the liquidation of the charges included in Class I before it is employed in liquidating the charges in Classes II and III, and in liquidating the charges in Class II before it is employed in liquidating those in Class III.

Current expenses.

Class I.

Charges necessary for the maintenance, education and indispensable religious observances of the ward and his family.

Charges necessary for the management and supervision of the property of the ward.

Charges on account of Government revenue and of all cesses and other public demands due in respect of such property, or any part of such property.

Class II.

Charges on account of rent, cesses or demands due to any superior landholder in respect of any land held on behalf of the ward.

B. Act IX of 1879, section 15.

B. Act IX of 1879, section 67.
C. P. Act XVII of 1885, section 27.

B. Act IX of 1879, section 68.
C. P. Act XVII of 1885, section 28.

M. Bill I of 1875, section 38.
B. Act IX of 1879, section 48.

Reg. V of 1804, section 17.

M. Reg. V of 1804, section 16.
M. Bill I of 1875, section 53.
B. Act IX of 1879, section 50.
Indian Trusts Act, 1882, section 20.

B. Act IX of 1879, section 65 A.

Debts, for which a demand has been made, and payment of which has been sanctioned by the Court.

Expenses necessary to protect the interests of the ward in Civil Courts or otherwise.

The maintenance in efficient condition of the estates, buildings and other immovable property belonging to the ward.

Such religious, charitable and other allowances as were paid out of the property before it became subject to the Court, and such allowances and donations befitting the position of the ward's family, as the Court may authorize to be paid.

Class III.

The improvement of the land and property of the ward and the benefit of the ward and his property generally.

28. If any surplus remain after providing, so far as the Court may think fit

Surplus.

for the objects mentioned in section 27, the same shall be applied in the purchase of other landed property, or invested at interest on the security of—

Promissory notes, debentures, stock and other securities of the Government of India, or of the United Kingdom of Great Britain and Ireland.

Bonds, debentures and securities, charged by the Imperial Parliament on the revenues of India.

Stock, or debentures of, or shares in, railways or other companies, the interest whereon has been guaranteed by the Secretary of State for India in Council.

Debentures, or other securities for money, paid by, or on behalf of, any municipal body under the authority of any Act of a Legislature, established in British India ; or

such other securities, stock, or shares, guaranteed by the Government of India, or the Government of Madras, as the Court shall deem fit.

29. Any expenses incurred by the Court

Recovery of expenses after release.

on account of any property under its charge, may be recovered after the release of such property as an arrear of land revenue under Madras Act II of 1864, or any similar Act in the time being in force, from any person into whose possession such property or any part thereof may have passed, immediately after the release of such property by the Court.

Provided that the sum so recovered from any such person shall not be greater than the value of any such property, which so passed into the possession of such person.

30. Whenever, on the death of any ward, the succession to his property or any part thereof is in dispute, the Court may either direct that such property, or part thereof, be made over to any person claiming such property, or may retain charge of the sums, until the dispute has been settled by a Civil Court.

PART III.

MANAGERS AND GUARDIANS.

31. The Court may appoint, suspend, or remove one or more managers for the property of any ward, and one or more guardians for the person of any ward.

Provided that it shall not appoint a guardian for any person declared incapacitated under section 5 (e).

32. If no manager or guardian is appointed by the Court, or the office is temporarily vacant, the District Collector in charge of the estate or any portion of it shall be competent, under the control of the Court, to do anything that might be done by such manager or guardian.

33. (a) In no case shall the next legal heir of a ward, or any person who appears to have a direct or indirect advantage in the death or disqualification of such ward, be appointed guardian of such ward.

Provided that the mother of a ward, or the guardian appointed by will of a person authorized to make such appointment shall be eligible for the office of such guardian at the discretion of the Court.

(b) If the ward be a female, her guardian shall also be a female, and if the ward be a male above 7 years of age, his guardian shall be a male, unless, in either case, for special reasons, the Court directs otherwise.

Provided that no guardian shall ordinarily be appointed for a female ward if she has an adult husband.

B. Act IX of 1879, section 13.
C. P. Act XVII of 1885, section 25.

M. R. V of 1804, section 8.
B. Act IX of 1879, section 20.
M. Bill I of 1875, sections 21 and 23.
C. P. Act XVII of 1885, sections 11 and 13.

B. Act IX of 1879, section 33.

M. Bill I of 1875, sections 25, 26 and 59.
B. Act IX of 1879, sections 20, paragraph 2, 44 and 45.
C. P. Act XVII of 1885, section 8.

M. Bill I of 1875, sections 26 and 59.
B. Act IX of 1879, section 45 (much modified).

C. P. Act XVII of 1885, section 8.

B. Act IX of 1879, sections 41 and 43.
C. P. Act XVII of 1885, section 12.

M. Reg. V of 1804, sections 10 & 21, clause 1.
M. Bill I of 1875, sections 28 & 29.

M. Bill I of 1875, section 47.

M. Reg. V of 1804, section 12, clause 3; section 21, clauses 7 & 8.
M. Bill I of 1875, sections 36, 44 & 46.

M. Reg. V of 1804, section 14.
M. Bill I of 1875, section 38.

M. Reg. V of 1804, section 22.
M. Bill I of 1875, section 45.

M. Reg. V of 1804, section 11, clause 2; section 21, clause 2.
M. Bill I of 1875, section 24.

M. Reg. V of 1804, section 12, clause 1.
M. Bill I of 1875, sections 34, 37.
B. Act IX of 1879, section 39.

M. Reg. V of 1804, section 15.
M. Bill I of 1875, section 39.

31. Every manager or guardian appointed by the Court shall—
Rules with regard to managers and guardians.

(a) give such security (if any) as the Court thinks fit, duly to account for the property in his charge, and for what he shall receive in respect to his position as such manager or guardian;

(b) continue liable to account to the Court, after he has ceased to be manager or guardian, for his receipts during the period of such management or guardianship;

(c) keep and present his accounts in such form and at such periods as the Court may direct;

(d) pay to the District Collector the balances due by him from time to time as the Court shall direct;

(e) sign all papers which may be executed by him in virtue of his office;

(f) apply for the sanction of the Court to any act which may involve the property in expense not previously sanctioned by the Court;

(g) be entitled to such allowance (if any) as the Court may direct;

(h) be responsible for any loss occasioned to the property by his default or gross negligence.

35. (a) Every manager appointed by the Court shall have power, subject to the control of the District Collector, to manage all property that may be committed to his charge, to collect the rents of land entrusted to him, as well as all other money due to the ward,

and to grant receipts therefor; and may, under the orders of the District Collector, grant or renew such leases as may be necessary for the good management of the property.

Provided that the District Collector, under the orders of the Court, may set aside such portion of the ward's property as he thinks fit for the ward's maintenance, use and comfort. The portion of the property so set aside shall be in the exclusive charge of the guardian.

Provided also that no manager shall sell, mortgage or permanently alienate any part of the property without the sanction of the Court.

(b) Every manager shall manage the property entrusted to him diligently and faithfully for the benefit of the proprietor and shall, in every respect, act to the best of his judgment, for the ward's interest, as if the property were his own.

(c) Every manager shall, as soon as may be after his appointment, draw up an exact statement of the property committed to his custody. Such statement shall be signed by the manager, and shall be presented to and filed by the District Collector.

36. A guardian appointed for the care of a ward shall, subject to the control of the District Collector, be charged with the custody of such ward, and must look to his maintenance, health, &c., and if the ward is a minor or a female to his or her education. He shall receive the allowance granted for the ward's maintenance and shall, subject to the inspection and control of the District Collector, employ such allowance as he thinks best for such ward's interests, prescribe the place where the ward is to reside and, if he is to be educated, the manner of his education.

37. The Court may order any past or present manager or guardian, or past or present officer subordinate to a manager or guardian, to deliver up his accounts, or any property which may be in his possession, within such time as may be fixed by the Court.

38. Every sum due to the District Collector from a manager or guardian, or from the sureties of a manager or guardian, shall be recoverable as a demand under Madras Act II of 1864, or any similar Act for the time being in force.

39. All sums received from a manager or guardian, either as an ordinary payment made to the Collector, or in respect of any security bond given under section 34, sub-section (a), or as a fine shall be carried to the credit of the proprietor, of whose property the said manager or guardian is or was in charge.

B. Act IX of 1879, section 40.

M. Reg. V of 1804, section 12, clause 2.
M. Bill I of 1875, section 35.

M. Reg. V of 1804, section 21, clauses 3, 9 & 10
M. Act XXI of 1855, sections 2, 3, & 7.
M. Bill I of 1875, sections 27, 40, 53, 60, 61, & 63.
B. Act IX of 1879, section 42.
C. P. Act, section 14 (b).

B. Act IX of 1879, section 47.

B. Act IX of 1879, section 46.

M. Reg. V of 1804, section 11, clause 3 (latter part).
M. Bill I of 1875, section 30.

M. Bill I of 1875, section 31.
C. P. Act XVII of 1885, section 12 (3).

40. Every manager or guardian, or other person employed in the management, or upon the property of any ward, or in his service, shall be deemed to be a "public servant" within the meaning of section 21 of the Indian Penal Code.

PART IV.—SUITS.

M. Reg. V of 1804, section 23, clause 1.
M. Bill I of 1875, section 48.
B. Act IX of 1879, section 51.
C. P. Act XVII of 1885, section 19.

41. In all suits brought by or against a ward with regard to the property of such ward in charge of a manager, the manager shall be joined as a party with such ward. In all suits brought by or against a ward with regard to such ward's person or the property of such ward in charge of a guardian, the guardian shall be joined as a party with such ward.

Provided that, if there be no manager or guardian, the District Collector shall be joined as a party with the ward.

42. If in any such suit any Civil Court shall decree any costs against the manager or guardian, or Collector, the Court of Wards shall cause such costs to be paid out of any property of the ward, which, for the time being, may be in its hands.

43. Any process which may be issued, out of any Civil Court against any ward shall be served upon the manager or guardian (if there be any), through the District Collector; or if there be no manager or guardian, on the District Collector.

44. No suit shall be brought on behalf of any ward by a manager or guardian, or Collector, unless the same be authorized by some particular or general order of the Court.

Provided that a manager or District Collector may authorize a plaint to be filed in order to prevent a suit from being barred by the law of limitation, but such suit shall not afterwards be proceeded with, except under the sanction of the Court.

Provided also that suits for arrears of rent may be brought on behalf of any ward, if authorized by the manager of the landed property on which such rents are due or the District Collector.

B. Act IX of 1879, section 53.

B. Act IX of 1879, section 54.

B. Act IX of 1879, section 55.
C. P. Act XVII of 1885, section 22.

45. Nothing contained in this part shall apply to any suit instituted or pending in the High Court, or to a proprietor whose property is under the charge of the Court of Wards under clause (e) of section 5, or the second paragraph of section 17.

Exceptions.

B. Act IX of 1879, section 56.
B. Act IV of 1892, section 11.

46. Any ward who considers himself or the next friend of any ward who considers him, to have been aggrieved by the conduct of the District Collector, manager or guardian, in the management of his property, or by the fact of the Court's assuming charge of it, may petition the Court, and the Court shall pass orders as it thinks fit; and, if required by such ward or his next friend, the Court shall submit such petition together with its order thereon to Government, whose decision shall be final.

When ward or next friend may petition Court or sue.

M. Bill I of 1875, section 49.

Provided that—

(1) Any person, who has been made, or who has reason, to believe that he is about to be made a ward, may file a suit against the District Collector for a declaration that he is not subject to the jurisdiction of the Court.

M. Reg. V of 1804, sections 7 and 23, clause 2.

(2) Any ward, or the next friend of any ward, may, with the permission of the Court, bring a suit against the District Collector, manager or guardian, or any other person, by whom he considers himself to have been injured.

(3) Nothing herein contained shall affect the right of any ward to institute criminal proceedings, or of any person who has been, but has ceased to be, disqualified to bring a suit in respect of any matter which occurred whilst he was disqualified, and which has not been adjudicated in a suit brought on his behalf.

PART V.—MISCELLANEOUS.

47. No property under charge of the Court shall be liable to sale on account of arrears of land revenue, or any public tax or cess, accruing while such estate is under the charge of the Court.

Estates under control not liable to sale for arrears.

M. Reg. V of 1804, section 14, clause 4.
M. Bill I of 1875, section 51.
B. Act IX of 1879, section 23.

Provided that all such arrears of revenue shall be the first charge upon the sale-proceeds of any such property which

may be sold for any other cause than for such arrears of revenue.

48. No estate, the sole property of a minor or minors, which has descended to him or them by inheritance or by virtue of a Will or settlement made by the deceased owner of it, and which is subject to the jurisdiction of the Court, shall be sold for arrears of revenue or other tax, accruing subsequently to his or their succession to the same, until such minor, or one of such minors, has completed the age of 21 years; but all arrears of revenue shall be the first charge on the proceeds of the estate, if it, or any part of it, is sold for any other cause.

Estates of minors subject to the Court's jurisdiction not to be sold for arrears.

The Collector may, on an arrear accruing on any such estate, attach the estate and manage it on behalf of Government, until the minor, or one of the minors, attains the age of 21.

49. (a) No ward shall be competent 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.

Wards not to create charges on property, or to adopt.

(b) No adoption by any ward, and no written or verbal promise to adopt given by any ward, shall be valid without the consent of the Court obtained either previously or subsequently to such adoption, or the giving of such permission, on application made to the said Court through the District Collector.

Provided that the provisions of this sub-section shall not apply to a proprietor of property disqualified under section 5, sub-section (e), or which remains in charge of the Court under the second paragraph of section 17.

50. Persons beneficially interested in any property under charge of the Court may inspect the accounts, which concern that property, on application to the District Collector whom the Court has placed in charge.

Persons beneficially interested may inspect accounts.

51. The Court may make rules consistent with this Act—

Court may make rules.

(a) prescribing what report shall be made from time to time by District Collectors on the condition of the ward and his family;

M. Reg. X of 1831, section 2 (2).
M. Bill I of 1875, section 50.
B. Act IX of 1879, section 24.

M. Reg. V of 1804, section 25.
M. Bill I of 1875, section 18.
B. Act IX of 1879, section 60.
C. P. Act XVII of 1885, sections 23 and 24.
B. Act IV of 1892, section 12.

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B. Act IX of 1879, section 70.
C. P. Act XVII of 1885, section 30.

(b) defining the powers of District Collectors, when the property of a ward is situated in two or more districts;

(c) conferring upon District Collectors, holding inquiries under this Act, the powers of a Civil Court in the trial of suits;

(d) regarding the custody of securities and title-deeds belonging to the property of a ward;

(e) regulating the form and amount of security to be given by managers and guardians;

(f) prescribing the periods at which, and the mode in which, accounts shall be submitted and balances paid by managers and guardians, and the mode in which such accounts shall be audited; and

(g) generally, for the better fulfilment of the purposes of this Act.

PART VI.—PENALTIES.

52. Any person who disobeys an order of a District Collector under sections 8 and 15 shall be liable, by order of the District Collector, to a fine not exceeding Rs. 500.

B. Act IX of 1879, section 57.

53. Any person who disobeys an order under section 37 may be punished, by order of the Court, with simple imprisonment and attachment of his property until the order is complied with.

B. Act IX of 1879, section 58.

Provided that the District Collector may release any person who has been so imprisoned on his furnishing sufficient security for his attendance and for the delivery of the accounts and property required within such time as the District Collector may deem fit. The District Collector may, at any time, rescind such order of release, and direct that effect shall be given to the previous order of imprisonment.

54. Whoever abets the marriage of any minor subject to the Court of Wards, or any child of such minor, unless the leave of the Court to such marriage has been first obtained, shall be liable, on conviction before a Court of Session, to a fine of Rs. 2,000, or imprisonment for a term not exceeding six months.

M. Act XXI of 1855, section 9.
M. Bill I of 1875, section 65.

B. Act IX of 1879, section 59.

55. Any person who disobeys any lawful order of the Court shall be liable, on conviction before a Magistrate, to a fine not exceeding Rs. 500; and if he is a manager or guardian appointed by the Court, to a fine not exceeding Rs. 1,000.

(Signed) J. GROSE.

30th October 1893.

MEMORANDUM I.

NOTE on the proposed Bill for amending and consolidating the Law relating to the Court of Wards.

The Bill had to be drafted with reference to the following Regulation, Acts and Bill:—

1. *Madras Regulation V of 1804.*—This with Regulations X of 1831 and XXI of 1855 contains the present law. The alterations proposed in it are shown in memorandum II.

2. *The North-Western Provinces Land Revenue Act XIX of 1873, Chapter VI.*—This is too brief to be of much use.

3. *Madras Bill I of 1875.*—This was prepared to amend Regulation V of 1804 and (in Part VIII) to consolidate the law relating to disqualified proprietors not subject to the jurisdiction of the Court or not Wards. After going through Select Committee and having been reported on by the Board in Court's Proceedings, dated 22nd December 1875, No. 3404, it was struck off the list of Bills before the Legislative Council (simply because it was an old Bill) in December 1882. I have been unable to ascertain why it was laid aside. Part VIII is superseded by the Wards and Guardians Act, 1890. I have followed it as far as possible, because, as it has been before the Legislative Council and passed through the throes of a Select Committee, any Bill on a different model would be regarded with disfavour and take a long time to pass. I have noted on the sections *seriatim* in memorandum III which shows why corresponding sections in my Bill differ from it and why some of its provisions are omitted.

4. *Bengal Court of Wards Act IX of 1879 as amended by Act IV of 1892.*—This is well drawn by men who probably had Madras Bill I of 1875 before them. It omits our cardinal principle that the Court cannot take charge of an estate without the consent of Government, but no section of it should be left out unless some good reason can be given for doing so. I notice the sections *seriatim* in memorandum IV which shows what provisions I have excluded and what I have added.

5. *Central Provinces Act XVII of 1885.*—This is the latest of all the Court of Wards Acts, but it is framed to suit the case in which the Court consists of a single person (a Deputy Commissioner), and does not fall in with our conditions in many respects.

I will notice the sections of my bill *seriatim*, referring to the corresponding sections in Madras Bill I of 1875 and the Bengal Acts, and drawing attention to the points on which—more especially—orders are required.

Of the figures which precede the paragraphs of this memorandum, those sub-marked 1 refer to the sections of my Bill, those sub-marked 2 to the sections of Madras Bill I of 1875, and those sub-marked 3 to the sections of Bengal Act IX of 1879.

Several abbreviations are allowable under the General Clauses Act I of 1891 (Madras). I need not say anything about these, or about the wording or arrangement of the Bill which must speak for themselves.

1₁, 1₂, 1₃. *Vide* page 1 of memoranda III and IV.

2₁, 2₂, 2₃. *Vide* page 1 of memorandum IV.

3₁, 5₂, 3₃. *Vide* page 1 of memoranda III and IV.

4₁, 3₂, 5₃. *Vide* page 1 of memorandum IV.

5₁, 4₂, 6₃. *Vide* page 1 of memorandum III and page 2 of memorandum IV.

One ground of disqualification which I have admitted, though in doubt, relates to "Persons who are in the opinion of Government rendered incapable by physical defect or infirmity of managing their property." The Bengal Act gives it as one of its grounds of disqualification, but limits it to persons declared by a competent Civil Court to be incapable. Before the Legislative Council, Mr. Ellis said he thought some accurate definition of physical defect or infirmity was necessary. The phrase seems to me to be vague, and I am not aware of any case in which we should have taken action under it. In the case of Parlākimedi the defect was mental. I think, as I have said, that it should be omitted, but as it occurs in the Acts of all three Provinces to which I have referred and was added by our Select Committee at the suggestion of the Board in Proceedings, dated 22nd July 1874, No. 1918, I have retained it pending orders.

I have omitted another ground of disqualification, given in Madras Bill I of 1875, viz., "Persons convicted of an unbailable offence and disqualified in the opinion of the Governor-in-Council by vice or bad character for the management of property." This is inserted in the Central Provinces and North-Western Provinces Acts, but not in the Bengal Act. In introducing the Bill, Mr. Cunningham said that the clause had been inserted at the suggestion of the Board, but that he did not like it, as it interfered with rights to private property which were jealously regarded by the law. It was agreed to by the Select Committee, but when their report was presented, Mr. Ellis said the law had already imposed a sufficient punishment; and he thought Government ought not to follow the native landholder throughout this whole career. Collectors, Morris and Stuart, wrote strongly against the clause, but the Board approved of it on the ground that it provided for the administration of the property during the imprisonment or banishment of the owner. I think the clause which (as I have said) is not in force in Bengal should be excluded.

I have followed Madras Bill I of 1875 in including "persons as to whom Government has declared on their own application that they are disqualified," &c. This will be less wanted if Government get their Encumbered Estates Bill passed. It may, however, be politic to apply the procedure of this Bill (a procedure which is adopted in Bengal) in many cases in which the drastic remedies of the Encumbered Estates Act are not wanted. I leave the section in therefore, and if the necessity arises it can easily be struck out with the subsequent passages depending on it.

6₁, 6₂, 7₃. This is a most important section and relates to a matter in which there has been a great change of opinion. When the amendment of the law was first devised, the Board of 1872 thought their field of jurisdiction was already too great. They said in Proceedings, No. 369, dated 23rd February 1872, "when this" (the present law) "was enacted the present state of things, when about two millions of tenants contribute directly to the Government Treasury, was unknown . . . It is a question whether it would not be preferable to exclude all properties under a certain value from the Court's jurisdiction, once for all, by specific legislation . . ."

Practically it is only the upper and affluent classes whose heirs require this kind of protection." In reporting on the original Bill in Proceedings, No. 1918, dated 22nd July 1874, the Board advised the inclusion of non-revenue-paying estates, but still suggested a minimum limit to the value of property the Court could take charge of. It said: "The Board would extend the provisions of this section to all landed property whatever, whether paying revenue direct to Government or not, so as to embrace the case of rent-free inams. The sole question should be—is any part of the property land? If so, the Court should be empowered to assume the management provided the value exceeds a certain limit." This limit the Board advised should be fixed at Rs. 1,000 for revenue-paying estates and Rs. 3,000 of rent-value for non-revenue-paying estates. In introducing the Bill Mr. Cunningham said: "The following are the chief amendments proposed. In the first place, as the law now stands, all property which pays revenue to Government comes under certain circumstances under the jurisdiction of the Court of Wards. . . . These provisions are found practically inconvenient. The number of revenue-paying estates has largely increased, and the action of the Court is desirable only in the case of the large estates. The Bill prescribes a limit below which the Court shall not have jurisdiction." Nevertheless the Select Committee not only stopped the limit as to the minimum value of revenue-paying estates, but added to the Court's jurisdiction non-revenue-paying estates whose annual rent value was Rs. 1,000. In their report, dated 14th June 1875, paragraph 4, they say they have abolished the minimum in the case of revenue-paying estates, "inasmuch as the amount of revenue is not invariably a test of the importance of the estate." They say nothing about non-revenue-paying estates. In reviewing the Bill, the Board in Proceedings, dated 22nd December 1875, No. 3404, approved of there being no limit in the case of revenue-paying estates, but remarked that in the case of non-revenue-paying estates *small* estates should be excluded. This is exactly what the Bill does. I have looked through the original proceedings. Mr. Thornhill says: "I think some limit is necessary, say Rs. 500. It will be practically impossible for the Court to take charge of every minor estate in a ryotwari country,

and yet some protection is required and minor ryots are excluded from the protection of the Civil Court under Part VIII, unless the property is worth Rs. 1,000 a year." (Part VIII has been since superseded by the Guardians and Wards Act, 1890, which prescribes no such limitation). On the margin of Mr. Thornhill's note Mr. Carmichael scrawls: "See section 10. Collectors *must* report on all estates paying Rs. 500 and upwards, and *may* report on all other estates." Mr. Ballard, writing of revenue-paying estates, says: "I would not fix a limit under which the Court should be debarred from interference." Thus it is clear that the Select Committee and the Board of December 1875 held a completely different opinion on this important point from the Board of February 1872. I think the Board of February 1872 was right. Even if proprietors, not taken charge of by the Court of Wards, were altogether unprotected, except by their relations or friends, I should think it wrong to extend the Court's jurisdiction to them. This was the case then, but now they are sufficiently protected by the Guardians and Wards Act, 1890. The peculiar machinery of the Board of Revenue, acting as a Court of Wards under the orders of Government, should, in my opinion, only be put in motion for the sake of valuable estates in which Government is directly interested. It must be noticed, however, that there is no limit as to the value of revenue-paying estates in the Bengal Act, or of both kinds of estates in the Acts of the North-Western Provinces and Central Provinces. In the Bengal Act the jurisdiction of the Court of Wards is limited to "estates," and estates are defined to be "the lands borne on the revenue-roll of a Collector as liable for the payment of one and the same demand of land revenue." I understand this as limiting the jurisdiction to revenue-paying estates, but I may be wrong.

On referring to the Bengal Act, I have thought it necessary to deal with the two cases, where there is only one proprietor and where there are several, and to notice the point that sometimes the Court may be able to control the property though the proprietor is out of its jurisdiction.

My "exception" prevents the Court from interfering in the case of an undivided family unless *all* the members are disqualified. This was not inserted in the original Bengal Act, but it was admitted that the idea that the Court could intervene

in such a case was "mischievous and preposterous" (Sir John Edgar in the Debates of the 15th March 1892 before the Indian Legislative Council), and so a clause which has that effect was inserted in the amending Act (section 2).

7, 8, 27. *Vide* page 2 of memorandum III.

8, 9, 29. *Vide* page 2 of memorandum III. I have adopted the wording of the Bengal Act generally, but I have introduced the Rs. 1,000 limit.

9, —, 29. This provides for the recovery of expenditure incurred in the preliminary protection of a minor. It is new to our law and is not contained in Madras Bill I of 1875, but it seems to me necessary. I have taken it from the Bengal Act.

10, 10, 27. *Vide* page 2 of memorandum III.

11, 12, —. This requires the Court to report to Government except in the case of females whom the Court thinks competent (Regulation V of 1804, section 3, subsection 2); the Bengal Act does not; though in section 69 it provides that the Court shall act under orders and instructions from Government.

12, 12, —. This provides that Government shall make proprietors wards, and is, of course, omitted in the Bengal Act.

13, 14, 28. *Vide* page 4 of memorandum IV.

14, —, 36. This is new to our law and is not contained in Madras Bill I of 1875, but it seems necessary to give the Collector power to take charge directly a proprietor is made a ward.

15, —, 36. This also is new to our law. It gives the Collector coercive powers which may be necessary in taking charge—*vide* page 4 of memorandum II.

16, 42, 8. *Vide* page 4 of memorandum II and page 2 of memorandum IV.

17, —, —, *Bengal Amending Act, Section 7*. This is new. It relates to cases in which the Court may retain charge after its ward gets his release, viz., when there are minor members of the family, or when the ex-ward is a joint proprietor and consents. The desirability of the former is proved by the Barwah case (Court's Proceedings, dated 22nd May 1874, No. 1211), and that of the latter is shown by its insertion in the Amending Act.

18, 15, 9(c). *Vide* page 4 of memorandum II and page 2 of memorandum IV.

19, 16, 9(d). *Vide* page 4 of memorandum II and page 2 of memorandum IV.

20, —, 14. This can hardly be said to be new since it gives the Court "powers of management, of guardianship, of entertaining establishments and of sanctioning expenditure" which it has now impliedly but I think it desirable to give these powers expressly—*Vide* page 4 of memorandum II.

21, —, 17. *Vide* page 4 of memorandum IV.

22, 20, 18. *Vide* page 3 of memorandum III.

23, —, 21. Having given the Court powers of management, it seems necessary to give it powers of guardianship.

24, —, 15. *Vide* page 3 of memorandum IV.

25, —, 67. The Court should obviously have the power of hearing appeals.

26, —, 68, and of supervision.

27, 38, 48. I think it desirable to classify current expenses as is done in the Bengal Act, but I have retained the provision of the present law requiring a demand to be made and the consent of the Court obtained before debts are paid.

28, 53, 50. It is obviously desirable to follow the Indian Trusts Act, 1882, in prescribing how any surplus is to be invested.

29, —, 65A. This is new. It provides for the recovery of expenses after an estate is released—*vide* page 5 of memorandum II.

30, —, 13. This also is new. It provides for the case in which the succession to an estate is disputed—*vide* page 5 of memorandum II.

31, 21 and 23, 20. *Vide* page 3 of memorandum III.

32, —, 38. This new provision that the Collector shall act as manager or guardian when there is none seems to be desirable—*vide* page 5 of memorandum II.

33, 25, 26 and 59, 20 para. 2, 44 and 45. *Vide* page 3 of memorandum III and pages 4 and 6 of memorandum IV.

34, —, 41 and 43. This gives much the same powers as the present law but it gives them in the shape that they are given in Bengal and the Central Provinces. See also page 4 of memorandum III. In one section I give the powers which are given by sections 24, 28, 29, 36, 38, 44, 45, 46 of Madras Bill I of 1875.

35, 34, 35 and 37, 39 and 40. *Vide* page 4 of memorandum III and page 5 of memorandum IV.

36, 27, 40, 58, 60, 61 and 63, and 42. *Vide* page 5 of memorandum III.

37_n—, 47₃. This is a new provision—one for making past and present managers, &c., give up accounts. It seems to be very necessary.

38₁—, 46₃. This is for the recovery of sums due from managers, &c., as arrears of land revenue. It seems to me very desirable—*vide* page 5 of memorandum II.

39₁, 30₂—, *Vide* page 3 of memorandum III.

40₁, 31₂—, This provision that servants of the Court shall be public servants seems to be desirable. It is inserted in the Central Provinces Act (section 22), but it is not inserted in the Bengal Act.

41₁, 48₂, 51₃. *Vide* page 4 of memorandum III.

42₁—, 53₃. *Vide* page 6 of memorandum IV.

43₁—, 54₃. *Vide* page 6 of memorandum IV.

44₁—, 55₃. This is new, but it seems to me obviously desirable that a ward's manager, &c., should not be allowed to file suits for him unless they are authorized by the Court, except in certain specified cases—*vide* page 6 of memorandum IV.

45₁—, 56₃. *Vide* page 7 of memorandum IV.

46₁, 49₂. *Vide* page 4 of memorandum III.

47₁, 51₂, 23₃. *Vide* page 5 of memorandum III.

48₁, 50₂, 24₃. *Vide* page 4 of memorandum IV. The question whether the estates of minors subject to the jurisdiction of the Court, but not under its control, should be free from the liability to sale for arrears seems to me somewhat doubtful; but it was specially enacted for this Presidency by Regulation X of 1831 and is the law in Bengal. I think the provision had better be retained, because if it is not retained, there will be great opposition and some debate in Council.

49₁, 18₂, 60₃. This is the clause forbidding a ward to create a charge on his estate. I have taken it from the Central Provinces Act. The question whether this form should be adopted was discussed when the Bengal Amending Act was passed. Chentsal Row proposed it and the Lieutenant-Governor *personally* approved of it, but Sir Philip Hutchins said the Select Committee and the Governor-General's Council had fully discussed the matter and decided that "it would not be right entirely to disable the ward from

contracting." I agree with Chentsal Row that unless contracts are absolutely prohibited the ward may get loans which, being only on personal security, will bear exorbitant interest. Still I don't see much objection to what was done in Bengal by section 60 of the original Act, and sections 12 and 13 of the Amending Act. With the Lieutenant-Governor, I think that the clause as so drafted will meet all practical necessities. It will run:—

"No ward shall be competent to create, without the sanction of the Court, any charge upon, or any interest in, his property or any part thereof; 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, 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 charge."

If the clause is retained as I have drafted it, I think my proviso is necessary.

50₁—, —. This is altogether new. It complies with the instructions of the Government of India concurred in by the Local Government, Government Order, dated 2nd May 1887, No. 419, Revenue.

51₁—, 70₃. *Vide* page 8 of memorandum IV. It seems to me obviously desirable to give the Court power to make rules. This is done both in the Bengal Act and in the latest Act of all the Central Provinces Act XVII of 1885, section 30.

52₁—, 57₃. *Vide* page 7 of memorandum IV.

53₁—, 58₃. *Vide* page 7 of memorandum IV.

54₁, 65₂—, *Vide* page 6 of memorandum III.

55₁—, 59₃. If the Court is to make rules there must be a penalty for infringing them.

(Signed) J. GROSE.

MEMORANDUM II.

NOTE on the chief omissions from, alterations in and additions to the existing law proposed in my Bill.

OMISSIONS.

1. *Regulation V of 1804, section 8, clause 4. The Court must refer to Government if it does not accept the Collector's nomination of a manager or guardian.*

This is a trifling matter, and one that should be left entirely to the Court.

2. *Section 9. Guardians shall never be managers (in the case of minors).*

Why not? The interests may be, but are not necessarily, in opposition.

3. *Section 11, clause 1 and 21, clause 1. Managers and guardians are to have signed and sealed commissions.*

Useless. They are only officials like other officials, say, Deputy Collectors, who have no such commissions.

4. *Section 24, clause 4. Managers convicted of fraud by the Court of Wards may appeal to the Civil Court.*

Why? No other official has this power.

5. *Section 11, clause 6. The provision that subordinates are as liable to punishment as managers, &c.*

Of course they are. All officials are.

6. *Section 13. The land possessed by wards is to be assessed like other lands.*

Of course it is. The principles of settlement are fixed.

7. *Section 14, clause 2. The pretence of fixing the maintenance allowance at 10 per cent. of the jumma.*

I can't see any object in this. The Regulation itself says that the 10 per cent. may be increased or diminished at pleasure (section 14, clauses 5 and 6).

8. *Section 16, clause 3. The Collector is to give receipts to the manager for deeds purchased on behalf of the ward.*

Why? It is the Court, not the manager, that is responsible.

9. *Section 16, clause 4. Collectors may receive the interest on investments made on behalf of the ward.*

Of course he may, if the Court tells him to.

10. Sections 10, &c., and 21, &c. The Regulation makes a complete separation between the sections about managers and those about guardians.

Why? Most of the provisions regarding the two officers are identical.

ALTERATIONS.

1. Section 3, clause 1 of the Regulation, and section 5 of my Bill. The present law applies only to property devolving by inheritance.

My Bill extends the application to property devolving in any way.

This seems obviously desirable.

2. Section 2, last paragraph of the Regulation, and section 6 of my Bill. The present law applies to all estates paying revenue direct to Government.

My Bill applies only to estates paying Rs. 1,000 of revenue.

This is a moot point on which orders are required. See memorandum I.

3. Sections 10 and 21 of the Regulation and sections 34 (a) and 51 (e) of my Bill. Particular forms of security for managers and guardians are prescribed.

My Bill leaves it to the Court to prescribe rules about this, as is done in the Bengal Act. Court's Proceedings, dated 15th February 1892, No. 480, and 18th June 1892, No. 2075, show that it is desirable to do so here.

4. Sections 12, clause 3 and 21, clauses 7 and 8 of the Regulation and sections 34 clause (e) and 51 clause (f) of my Bill. It is prescribed that guardians and managers shall present accounts monthly and annually.

—My Bill leaves it to the Court to prescribe what accounts are to be rendered, as is the case in Bengal. It is possible that other accounts may be wanted.

5. Sections 11, clause 5 and 21, clause 6 of the Regulation and section 20, clause (e) of my Bill. The Regulation gives the power of entertaining establishments expressly to the manager and guardian.—My Bill gives this power to the Court who (section 24) exercises its powers through managers and guardians.

The power must be given to the Court. Why should it be given independently to subordinates?

6. Section 15 of the Regulation and section 35 of my Bill. Managers are allowed to grant leases for a year only without the consent of the Collector. My Bill makes

the Collector's consent necessary for all leases.

I don't see why any distinction should be made in this respect between leases for 1 year and leases for more.

7. Section 16, clause 1 of the Regulation and sections 27 and 28 of my Bill. The payment of current expenses is too briefly dealt with and the provisions for investing the surplus have been superseded by the Indian Trusts Act, 1882.—My Bill revises this, following the Bengal Act. In doing so it meets the wishes expressed by the Government of India in paragraph 8 of the Resolution in Court's Proceedings, dated 15th August 1892, No. 2824.

8. Section 16, clause 2 of the Regulation and section 51 (d) of my Bill. The Regulation declares that the Collector is to deposit deeds, &c., in the public treasury.—This is a purely administrative matter. My Bill leaves it to the Court to make rules about it.

9. Section 4 of the Regulation and section 3 of my Bill. The Regulation fixes the age at which minority shall terminate as 18.—My Bill refers to laws which make it 21 in the case of wards of the Court and 18 in the case of other minors.

10. Section 23 of the Regulation and 41 of my Bill. The Regulation declares that the minor shall always be sued in the name of his guardian.—My Bill follows paragraph 7, Board's Standing Order No. 218, and makes the ward be sued in connection with the manager as regards property in charge of the manager.

ADDITIONS.

1. Section 5 of my Bill adds two grounds of disqualification, viz., disqualification by reason of physical defect or infirmity, and disqualification at the wish of the proprietor, acquiesced in by Government.

See Memorandum I on this point.

2. Section 6 of my Bill makes the minor members of the family of a ward wards.—This is always done, but the existing law gives no express power to do it.

3. Section 8 provides for the immediate protection of a minor on whom property devolves.—This seems obviously necessary. As the Board and Mr. Cunningham have frequently remarked, there are always rogues hanging about who try to loot on these occasions.

4. Section 9. This provides for the recovery of the expense so incurred if the estate is not ultimately taken charge of.—The work done must cost something.

5. Sections 13, 17, 18 and 19. The Court may take charge without receiving a report, may retain charge (in some cases after a ward is released), resume charge or withdraw from charge.—These are all powers which experience has shown us are wanted, and which are taken by the Bengal Act. Court's Proceedings, dated 22nd May 1874, No. 1211, gives an instance in which the retention of property was desirable. Court's Proceedings, dated 5th September 1887, No. 1336, gives an instance of the desirability of resuming charge. The Advocate-General has advised us that, as the law stands at present, we cannot withdraw from charge, even when the ward holds no land (as in the case of the Parlákimedi Zemindar), or is sold up, and has nothing, as will soon be the case with the Pulicherla ward.

6. Section 15. Full power is given to a Collector for taking charge of a ward's property.—There always are difficulties which are generally overcome illegally now. Paragraph 8 of the Government Pleader's opinion in Government Order, dated 20th May 1871, No. 886, and the opinion in Court's Proceedings, dated 29th December 1876, No. 3323, show that some of the difficulties, which ought not to be insuperable, are so.

7. Section 16. It states when wards are to be released from wardship.—This is obviously desirable. Otherwise there is no provision for making wards, other than minors, cease to be wards.

8. Sections 20, 22, 23, 24, 25 and 26. It provides expressly for the power of the Court to manage, exercise guardianship, authorize expenditure and entertain establishments, and for the exercise of these powers through Collectors, &c. It gives the Court full powers to hear appeals and revise.—The present law seems to me deficient in this respect. The Regulation gives the powers very briefly. Madras Bill I of 1875, Section 20, gives the Court power to lease, mortgage, sell and "do all such other acts as it judges to be most for the benefit of the ward and his estate." If we give powers so generally we must say that nothing the Court does shall be questioned by the Civil Courts as is done in the Central Provinces Act, but this looks arbitrary and is not in accordance with Madras policy.

9. Section 21. It gives the Court power to apportion general charges amongst all the estates in wardship.—The Bengal Act provides for this. We sought for some such provision in the law (but could not find it) when we took advice as to the security bonds which should be taken from managers and guardians.

10. Section 29. It provides for the recovery of expenditure incurred in management after an estate is released.—We generally order some of the balance to be retained to meet unforeseen charges, but if enough is not retained, we have no other resource.

11. Section 30. It provides for cases in which the Court (e.g., on the death of a ward) has to hand over an estate but the succession is disputed.—This has been shown to be necessary lately in the cases of Neliyalam (Nilgiris) and Uthumalai (Tinnevely). The power is taken by the Bengal Act.

12. Section 31. It provides for the removal of the guardian at the Court's discretion.—He can now only be removed in the case of proved disobedience to orders, &c. (section 5, Act XXI 1855). The Court often wants to remove him because some one else would do the work better.

13. Section 32. It provides for the Collector to act if there is no manager or guardian.—There often may not be, as for instance, when the office is temporarily vacant.

14. Section 33 provides for the possible appointment of male guardians to females.—This is necessary sometimes (as experience has frequently shown) in the case of Malabar females.

15. Section 37. It provides for making managers and guardians give up accounts.—This is obviously necessary and the power is taken in Bengal.

16. Section 38. It provides for the recovery of sums due from them or their sureties as arrears of Land Revenue.

This seems to me desirable. They are Government dues. The power is taken in the Bengal Act.

17. Section 40. It makes them public servants.

This is obviously desirable. The Board pointed this out when the amendment of the law was first contemplated. The power is taken in the Central Provinces and North-Western Provinces Acts.

18. Sections 42 and 43. It provides for costs and processes in which a ward is concerned.

This is obviously desirable and follows the Bengal Act.

19. Section 44. It forbids suits to be brought in the name of a ward without the sanction of the Court.

This is obviously necessary. The prohibition is in the Bengal Act.

20. Section 49. It prohibits a ward from creating a charge on his property or contracting.

The former part of this at all events is necessary. With regard to the latter part, see Memorandum I.

21. Section 50. It allows beneficially interested people to inspect accounts.

Government Order, dated 2nd May 1887, No. 419, Revenue, shows that the Government of India and the Local Government both want this provision inserted.

22. Section 51. It gives the Court power to make rules.

This seems to me obviously desirable. The power is taken both in Bengal and the Central Provinces.

23. Sections 52, 53, 55. It provides penalties for disobedience to the orders of the Collector or the Court.

This is obviously desirable. The power is taken in Bengal.

24. Section 54. In addition to the penalties for abetting the marriage of a minor, it punishes the abetment of the marriage of the child of a minor.

This is necessary now that minors may be 21 years of age.

(Signed) J. GROSE.

MEMORANDUM III.

Comparison of Bill I of 1875 with my Bill noting the observations of the Board on that Bill.

NOTE.—The figure with no sub-mark denotes the section of Bill I of 1875 under consideration; that sub-marked, the section of my Bill which corresponds to it.

1. 1. Shortened in accordance with the General Clauses Act, which makes it unnecessary to say anything about the commencement.

2. 2. There is no need of a schedule.

3. 4. Identical.

4. 5. Females are to be declared incompetent by the Court. Minors are to be declared so by the Court. I doubt about (d), but have retained it. I have excluded (e). See Memorandum I.

5. 3. The Board (Proceedings, dated 22nd December 1875, No. 3404) has pointed out that the definition of "Collector" will not do. I have inserted in my Bill the words "District Collector" which, as defined in the General Clauses Act, seem to be unobjectionable. Bill I of 1875 defines manager and guardian, but that seems to be unnecessary. It does not define "minor," but I think it is as well to define the word with reference to the Majority Act and the Wards and Guardians Act.

6. 6. My Bill limits the jurisdiction of the Court to estates paying revenue of Rs. 1,000 per annum. Bill I of 1875 repeats the provision of the existing law which extends it to all revenue-paying estates, and adds to it non-revenue paying estates of the rent-value of Rs. 1,000. See Memorandum I.

My Bill extends the provision to minor members of the family of disqualified proprietors, and gives the Court power to take charge of person or property or both (as in Bengal).

Like I of 1875 it excludes an undivided family of which all the members are not disqualified. I do not see any need of the second exception. It is embodied in the main clause.

7. Wards of Court are defined in section 3 of my Bill. The second paragraph finds a better place in my section 12.

8. 7₁. The Court may confer the powers of a Civil Court on the Collector under section 51, so the provision is omitted here.

9. 8₁. The Bengal section seems to be better drawn and I have adopted it. The Board (Court's Proceedings, dated 22nd December 1875, No. 3404) draws attention to the suggestions of Mr. Foster and Mr. Bliss, and says they merit consideration. Mr. Foster thinks the person of the minor should be protected. My Bill provides for that. Mr. Bliss thinks the nearest Magistrate should be ordered to proceed to the spot, &c. This must be left to the Collector.

10. 10₁. There seems to be no need to give details as to the points on which the Collector is to report. It seems enough to provide that in all cases where the Court has jurisdiction he shall report all material circumstances and nominate a manager and guardian if that seems to be desirable. The Board pointed out that the Collector ought to be told to nominate a manager. Bill I of 1875 says the Collector must report in the case of estates paying revenue to the extent of Rs. 500 per annum and may report in the case of all other estates. Under my Bill he must report in all cases in which Rs. 1,000 of revenue is paid and may report in no other cases. See Memorandum I, page 4.

11. The first paragraph of this section is included in my section 10, and the latter part in my section 33.

12. 11₁. I have added the bit of the present law which says *the Court* may leave a female in charge.

13. 12 and 20 (b)₁. I have retained these two provisions, but placed the second in what I consider a better place.

14. 13₁. Difference merely verbal.

15. 18₁. Almost identical.

16. 19₁. Identical.

17. 51₁. My Bill leaves it to the Court to make rules as to the duties of Collectors when an estate is situated in more than one district. This obviates the objection taken by the Board to the fact that Bill I of 1875 does not provide for the custody of a ward whose property is situated in more districts than one.

18. 49₁. My Bill retains this provision except as regards the power of a ward to make a Will. I don't see why he should be deprived of that. See, however, Memorandum I, page 8.

19. Unnecessary. *Vide* Act X of 1892 (India).

20. 20 (a) and 22₁. The same provisions are made except that the power of the Court to sell is not made subject to the sanction of Government. It is not under the present law and it would be very inconvenient to make it so, as the Board points out with regard to moveable property. The Board of 1875 thought that the sanction of Government should be obtained for the sale or mortgage of immovable property. I do not agree.

21. 31₁. I make the same section apply both to guardians and managers and I provide in subsequent sections for the control by the Collector which is pointed out by the Board to be desirable.

22. 34 (g)₁.

23. Contained in my section 31 as mentioned above.

24. Contained in my section 34 (g).

25. 33₁. Identical. The Board observed that the appointment of the next legal heir should not be absolutely prohibited, but left to the Court's discretion. I do not agree.

26. 33₁. I repeat section 26 of the Bill of 1875, but I add to it the provision that if the female has an adult husband she shall not be placed under a guardian.

27. 32 and 36₁.

28. 34 (a) and 51₁. Instead of fixing the terms of the security bond by law, I think it will be better to have the Court to make rules about it.

29. 34 (a) and 51₁.

30. 39₁. I think all sums recovered from a manager or guardian (as such) including fines, for instance, should go to the estate.

31. 40₁. The same.

32. Unnecessary. Section 20 (c) gives the Court the power to entertain establishments, and section 24 the power to do so through the manager.

33. This too is unnecessary. The Collector's power to control is given by section 35 and the Court's power to revise by section 26.

34. 35 (a)₁. The Board thinks the minor's house should be specially excepted. I don't see why it should be specially mentioned. It will obviously be part of

the property which is to be handed over to the guardian.

35. 35 (c)₁.

36. 34 (c) and 51₁. I leave it to the Court to make rules as to accounts. As the Board pointed out, the manager should be bound to submit such accounts and furnish such information as may be called for from time to time.

37. 35 (a)₁. There is no need specially to mention interest after saying that the manager may collect all money due to the ward.

38. 34 (d), 27 and 28₁. I leave it to the Court to make rules as to when the balance should be paid, classify current expenses and provide for the disposal of the surplus according to the Indian Trusts Act.

39. 35₁. I provide that all leases, whether for a year or more, should be sanctioned by the Collector as is done in Bengal. The Board approved of this.

40. 36₁.

41. This is not wanted. The Act gives him all the powers he should have.

42. 16₁. I provide for the termination of all wardships. The Board thought this should be done (Board's Proceedings, dated 22nd December 1875, No. 3404).

43. Not wanted. See observations on 32.

44. 34 (c)₁. *Vide* observation on 36. The Board agreed with Mr. Bliss that vouchers should be attached to the accounts. There is no need of a law for this.

45. 34 (e)₁. There is no need of the paragraph about the seal.

46. 34 (c)₁. The "declaration" seems to me unnecessary. This is really made when he submits the account-current under his signature.

47. 34 (b)₁. This should obviously apply to managers as well as guardians. *Vide* Court's Proceedings, dated 22nd December 1875, No. 3404.

48. 41₁. I have drafted a section in accordance with the Board's Standing Orders. The Board of 1875 thought the Civil Court might be bound to appoint the Collector guardian *ad litem*.

49. 46₁. This is not provided in the Acts of other Provinces, but it is in accordance with the present law and seems to me

unobjectionable. The omission of it would give rise to much discussion.

50. 48₁. I take the wording of the corresponding Bengal section and insert the saving clause about arrears being the first charge on any part of the property sold which is, in part, provided by section 52 of the Bill of 1875. The Board of 1875 thought the concession to minors not taken under the charge of the Court should be absolutely withdrawn, as no limit was fixed, but my Bill fixes a limit. The Board also remarked that the concession should only apply to arrears accruing after the accession of the minor. My Bill does this.

51. 47₁. The same observations apply. The Board pointed out that this section and section 52 should be recast so as to give the Court greater powers for recovering arrears. I think my Bill does enough.

52. 47 and 48₁. See above.

53. 27 and 28₁. The classification of current expenses given in the Bengal Act seems to me desirable. The investment of the surplus must be effected in accordance with the Indian Trusts Act.

54. 51 (d)₁. I leave it to the Court to make rules about the custody of title-deeds, &c. The Board thought the Collector should be ordered to keep such papers "in a Public Treasury as the Court may direct."

55. Not wanted. It is the Court, not the manager, who is responsible.

56. Not wanted. The Court draws interest on its own investments.

57. 47₁. This provision takes its proper place in the section about current expenses.

58. 36₁. The guardian is to do it subject to the control of the Collector. The Board thought special provision should be made for the case of a ward having property in more than one district, but as my Bill is worded I don't think this is necessary.

59. 33 (b) and 36₁. These two sections of my Bill contain the provisions of 59.

60. 36₁. The Bill of 1875 limits the residence to places within the Madras Presidency. This is not desirable (*vide* Board's Proceedings, dated 22nd December 1875, No. 3404). The Board also thought that European British subjects should be expressly excepted from the Bill,

and that sections 60—63 should be made to apply only to male wards. I don't think this desirable.

61. 36.

62. Not wanted. It is a matter of course that expenses so incurred shall be paid like other expenses incurred for the ward.

63. 36.

64. Under section 6 of my Bill, all minor members of a disqualified proprietor are subject to jurisdiction.

65. 54. I make this applicable to any minor subject to the Court of Wards or his child as the Board advised. All minor members of a ward's family are subject to jurisdiction. A minor of 21 may have a child.

66. *Et. seq.* Superseded by the Guardians and Wards Act, 1890.

(Signed) J. GROSE.

MEMORANDUM IV.

Comparison of the Bengal Court of Wards Act IX of 1879 as amended by Bengal Act IV of 1892 with my Bill.

Section 1 of the Bengal Act, 1879—Section 1 of my Bill.—The Bengal Act includes the scheduled districts. We may leave this to Government. The Madras General Clauses Act I of 1891 makes it unnecessary to say anything about the commencement.

Section 2 of the Bengal Act—Section 2 of my Bill.—The General Clauses Act makes it unnecessary to insert the last 5 paragraphs. The Bengal Amending Act inserts a provision about undivided families which comes in my section 6.

Section 3 of the Bengal Act and section 2 of the Amending Act, section 3 and proviso of my Bill.—The Bengal Act defines "Collector," "the Court" (as including persons to whom it delegates its powers), "estate," "minor," "section," and "ward." My Bill defines Court, ward and minor. I generally use the term *District Collector* which is defined in the General Clauses Act. I see no need for extending the definition of the "Court" to persons to whom it delegates its powers. "Estate" is defined because it is proprietors of *estates* who are disqualified according to the Bengal Act. My Bill describes the owners of *property* who are disqualified. There are laws fully defining the age of minors and I think it best to refer to them. "Section" need not be defined. It is best to define a "ward" as a person who has been made a ward of Court under sections 12 and 13.

The clause in the Amending Act is inserted to exclude undivided Hindu families, and this is undoubtedly desirable. It is effected by the proviso to section 6 of my Bill.

Section 4 of the Bengal Act.—I do not see the use of this. The things excluded from the Act could not possibly be affected by it. Local Acts cannot annul Acts of the Indian legislature without the express consent of the Governor-General, and they cannot touch the Charter of the High Court.

Section 17 of the Bengal Act—Section 21 of my Bill.—This gives the Court the power to apportion general charges amongst all the estates in its charge. We have often felt the want of this power; as an instance, I may mention the occasion when we thought we might have to pay Barclay and Co. for advising about the bonds of managers and guardians.

Section 18 of the Bengal Act—Section 22 of my Bill.—This gives the Court a general power to lease, mortgage, sell, &c., and seems to be necessary.

Section 19 of the Bengal Act.—This does not seem to be wanted here.

Section 20 of the Bengal Act—Section 31 of my Bill.—This gives the Court full power to appoint and remove managers and guardians. My Bill empowers the Court to suspend them also.

Second clause of section 20.—This power is given in my section 33.

Section 21 of the Bengal Act—Section 23 of my Bill.—My Bill follows the Bengal Act.

Section 22 of the Bengal Act—Section 20 (b) of my Bill.—I retain all the provisions of Bengal.

Section 23 of the Bengal Act—Section 47 of my Bill.—This exempts estates under charge from sale for arrears; clause 2 does not seem to me wanted.

Section 23 A of the Bengal Act.—This does not seem to me to be wanted.

Section 24 of the Bengal Act—Section 48 of my Act.—This exempts the estates of minors subject to jurisdiction but not taken charge of from being sold. See Memo. I, p. 8.

Section 25 of the Bengal Act.—This does not seem to me to be wanted.

Section 26 of the Bengal Act.—This does not seem to me to be wanted.

Section 27 of the Bengal Act—Sections 7 and 10 of my Bill.—This relates to the preliminary inquiry by the Collector.

Section 28 of the Bengal Act—Section 13 of my Bill.—This power to take charge though no report is submitted seems to be necessary. The Board has advised it.

Section 29 of the Bengal Act—Sections 8 and 9 of my Bill.—This regards the immediate protection of a minor and the recovery of expenditure so incurred. It is necessary for obvious reasons.

Section 30 of the Bengal Act—Section 8 of my Bill.—All that is necessary is provided in my section 8.

Section 31 of the Bengal Act.—This seems to me not to be wanted. The Board can always order the application.

Section 32 of the Bengal Act.—This, too, seems to me not to be wanted. I have already expressed an opinion that this ground of disqualification ought not to be retained, but that if it is retained Government should be the deciding authority.

Section 33 of the Bengal Act.—I do not think this is wanted.

Section 34 of the Bengal Act.—It follows from the omission of the last three sections that this is not wanted.

Section 35 of the Bengal Act—Section 12 of my Bill.—Under the existing law and my Bill Government is to give the order.

Section 36 of the Bengal Act—Sections 14 and 15 (a) of my Bill.—I follow the Bengal Act in giving the Collector full power to take charge of movable property.

Section 37 of the Bengal Act—Section 15 (b), (c), (d), of my Bill.—This supplements the foregoing section. I follow the Bengal Act.

Section 38 of the Bengal Act—Section 32 of my Bill.—I follow the Bengal Act.

Section 39 of the Bengal Act—Section 35 (a) of my Bill.—This is the existing law. I add a proviso to the effect that some of the property is to be kept back from the manager and placed in charge of the guardian. This is a mere question of drafting.

Section 40 of the Bengal Act—Section 35 (b) of my Bill.—This too is the existing law.

Section 41 of the Bengal Act—Section 34 (a) to (h) of my Bill.—Section 41 (a) is included in my section 35 (a). The other provisions are included in section 34. The only difference from the existing law is that it leaves it to the Court to make rules as to the form and amount of security and as to the period at which accounts should be rendered and balances paid.

Section 42 of the Bengal Act—Section 36 of my Bill.—This is the existing law.

Section 43 of the Bengal Act—Section 34 of my Bill.—The same rules apply both to managers and guardians and I have kept them together.

Section 44 of the Bengal Act—Section 33 (a) of my Bill.—This is the existing law.

Section 45 of the Bengal Act—Section 33 (b) of my Bill.—For the provisions of the Bengal Act about guardians to females, which seem to me unnecessary, I substitute the exception as to appointing female guardians to females which has been found necessary in Malabar and as to not appointing another guardian if the female has an adult husband which is taken from section 8 of the Central Provinces Act (XVII of 1885).

Section 46 of the Bengal Act—Section 38 of my Bill.—This provision for the recovery of sums due from managers or guardians, &c., as arrears of land revenue seems to me desirable.

Section 47 of the Bengal Act—Section 37 of my Bill.—So does this about making managers and guardians give up accounts, &c.

Section 48 of the Bengal Act and Section 9 of the Amending Act—Section 27 of my Bill.—This classes current expenses elaborately. I have followed it, but I have introduced the provision of the existing law about debts.

Section 49 of the Bengal Act—Section 10 of the Amending Act.—This seems to me unnecessary.

Section 50 of the Bengal Act—Section 28 of my Bill.—This directs investment of the surplus according to the Indian Trusts Act.

Section 51 of the Bengal Act—Section 41 of my Bill.—I have altered the wording considerably, but leave the provisions much the same. My Bill follows the Board's Standing Orders.

Section 52 of the Bengal Act.—I don't think this is wanted.

Section 53 of the Bengal Act—Section 42 of my Bill.—This provision for the payment of costs seems to me desirable.

Section 54 of the Bengal Act—Section 43 of my Bill.—So does this about processes.

Section 55 of the Bengal Act—Section 44 of my Bill.—This statement of what suits must be authorized and what need not be authorized is good; I have adopted it.

Section 56 of the Bengal Act as amended by section 11 of the Amending Act—Section 45 of my Bill.—This exempts from the sections about suits proprietors disqualified under clause (e) of section 5, or

who have consented to let the Court take charge again after they have got out of wardship.

Section 57 of the Bengal Act—Section 52 of my Bill.—A penalty for disobedience to the orders of a Collector taking charge of a ward's property seems to me very desirable.

Section 58 of the Bengal Act—Section 53 of my Bill.—Similarly a severe penalty is necessary for disobedience under section 37. I follow the Bengal law.

Section 58 (a) of the Bengal Act.—This seems to me not to be wanted; section 52 seems to be enough.

Section 59 of the Bengal Act—Section 55 of my Bill.—A penalty is necessary for disobedience to the orders of the Court.

Section 60 of the Bengal Act—Sections 12 and 13 of the Amending Act—Section 49 (a) of my Bill.—I add to the disabilities of the ward ordered in the Bengal Act, disability to make contracts. See Memo. I, pp. 8 and 9.

Section 61 of the Bengal Act—Section 49 (b) of my Bill.—The Bengal Act makes the consent of Government to adoption necessary. My Bill follows the existing law and makes the consent of the Court only necessary.

Section 62 of the Bengal Act—Section 49 (proviso) of my Bill.—I extend the power to adopt to disabled proprietors under clause (e) of section 5.

Section 63 of the Bengal Act.—I don't think this is wanted.

Section 64 of the Bengal Act.—Nor this.

Section 65 of the Bengal Act.—Nor this.

Section 65-A of the Bengal Act—Section 29 of my Bill.—This proviso for the recovery of expenses after an estate is handed over seems to me necessary.

Section 66 of the Bengal Act—Section 51 (c) of my Bill.—It is often desirable for a Collector holding inquiries under this Act to have the power of a Civil Court, but not always. My Bill, following the Central Provinces Act, section 30, gives the Court power to authorize the Collector accordingly.

Section 67 of the Bengal Act—Section 25 of my Bill.—The Court should have the power of appeal.

Section 68 of the Bengal Act—Section 26 of my Bill.—The Court should have the power of supervision.

Section 69 of the Bengal Act—This is not wanted. Of course the Court must obey Government.

Section 70 of the Bengal Act—Section 51 of my Bill.—My Bill omits to give the Court the power to make rules under (e) and (f) of the Bengal Act, and adds the powers given in (b) and (h) of section 30 of the Central Provinces Act.

To sum up, I exclude sections 4, 10, 19, 23A, 25, 26, 31, 32, 33, 34, 49, 52, 58A, 63, 64, 65 and 69 of the Bengal Act and add sections 11, 12, 40, 46, 50 and 54 of my Bill.

(Signed) J. GROSE.

REGULATION V OF 1804.¹

Passed on the 28th of August, 1804.

A Regulation for constituting a Court of Wards, for declaring the powers vested in the said Court, and for defining the Rules under which those powers are to be exercised.

WHEREAS sundry persons, being the legal inheritors of property, have been and may hereafter be incapacitated by minority, sex or natural infirmity from taking charge in their own behalf of such property, by reason whereof the said property has been liable to be transferred to the custody and management of other persons not being liable to due responsibility or control; and whereas instances have frequently occurred wherein such temporary managers have abused the trust to which they have succeeded, by neglecting the interests or by the fraudulent dilapidation of such property, to the great injury and distress of the persons on behalf of whom the said trusts have been undertaken; and whereas it is expedient and necessary that secure and efficient means should be established, under the sanction of public authority and of legal provisions, for the due preservation of the property of incapacitated persons, the education of minors, and the care of the persons of lunatics and idiots—wherefore the Governor in Council has been pleased to establish a Court of Wards for those purposes, under the following regulations:—

2. The Court of Wards shall consist of the members of the Board of Revenue at the Presidency for the time being, and shall possess full power and authority to take cognizance of all cases of property devolving to heirs incapacitated by minority, sex or natural infirmity from administering their own affairs.

The Court of Wards shall also possess power to select and appoint proper persons to the custody and management of property so situated, to the education of minors, and to the care of lunatics and idiots (as the case may happen), taking due means to secure and to render the persons so to be selected and appointed responsible for the proper execution of the trust reposed in them:

Provided, nevertheless, that the said Court of Wards shall not proceed to exercise any power of superintendence over the persons or property of incapacitated persons until each separate case, together with all the circumstances connected, shall have been submitted to the Governor in Council, and until the authority of the Governor in Council shall have been signified in writing for the exercise of the said powers by the Board of Revenue, acting in its capacity of the Court of Wards;

and provided further that the power of the Court of Wards shall not extend in any case to the property of persons not paying directly rent or revenue to Government.

3.² *First.*—Where property charged with the direct payment of rents or revenues to Government shall devolve, by inheritance, to persons incapacitated by minority, sex or natural infirmity from taking charge of the said property on their own behalf, it shall be the duty of Collectors to transmit, without delay, to the Board of Revenue, in the capacity of Court of Wards, a written report (founded on personal inquiry or on the testimony of credible persons, according to the nature of the case), describing all the circumstances of each particular case; whereupon the Board of Revenue shall state such cases, together with their opinion and judgment, to the Governor in Council, to the end that the decision and orders of the Governor in Council may be passed thereon.

Second.—It shall nevertheless be competent to the Court of Wards, upon due and sufficient proof of the means, ability and discretion of females who may succeed to the possession of property by inheritance, gift or otherwise, to regulate their own affairs, to put the said females respectively in the possession and management of their property.

¹ Declared to be in force in the whole of the Madras Presidency, except as regards the Scheduled Districts—see Act XV of 1874, s. 4. As regards the country of Rampa and the taluqs of Bhadrachalam and Rakapilli, see Appendix.

² See Mad. Reg. X of 1831, s. 2, cl. 2.

4. Where minors may succeed to inheritable property, they shall not, in any case, be competent to take charge of or to administer their own affairs during the period of their minority; and for the better understanding thereof the duration of minority shall, without exception, continue until the completion of the eighteenth year of age.¹

Minors not competent to administer their own affairs.
Duration of minority.

5. Persons succeeding to property by inheritance, but being incapacitated by lunacy, idiotism or other natural infirmity, shall in no instance take charge or administer the affairs of such property on their own behalf.

Incapacitated heirs not competent to administer.

6.² The Proceedings of the Court of Wards shall, in the first instance, be founded on the reports of the Collectors respectively, to the end that no delay may occur in providing for the due security and management of the property of persons incapacitated by minority, sex or natural infirmity; but Collectors making such reports upon insufficient authority, whereby inheritors of property shall be deprived of the possession and management of the said property on their own behalf, shall be liable to prosecution in the Courts of Adalat, either at the instance of the parties injured or of the Court of Wards; and upon proof that such undue reports have been made through negligence, or for malicious purposes, awards of damages, together with costs, shall be granted against Collectors so offending.

Proceedings of Court to be founded on reports of Collectors.
Collectors liable to prosecution for making reports upon insufficient grounds.

7.³ First.—Where persons being under the description of females, minors, lunatics or idiots, and being by reason thereof deprived of the possession or management of their property, shall see reason to dispute the grounds on which the reports of the Collectors in the cases respectively may have been framed, shall observe the following process, to the end that immediate relief may be obtained.

Procedure where disqualified persons dispute grounds on which they have been excluded from management.

Second.—Such persons shall respectively lay their cases, together with the evidence and documents in support thereof, before the Judge of the Zila, who shall in the first instance be competent to receive and entertain all such claims.

To submit case, together with evidence to Zila Judge.

Third.—Judges of Zilas shall transmit, with all reasonable expedition, copies of such cases, together with copies of the evidence and documents in support thereof, to the Court of Sadr Adalat; whereupon the Court of Sadr Adalat shall immediately issue a precept to the Judges of Zilas to bring the parties complaining before those Courts.³

Judges of Zilas to transmit copies of such cases and of evidence to Sadr Adalat.

Fourth.—The Courts so empowered shall make ocular observation in open Court of persons so complaining, and shall further take in writing the oaths of not less than three credible persons well acquainted with the said parties and the facts and circumstances connected with the cases respectively, whereupon the inferior Courts so empowered shall transmit to the Court of Sadr Adalat the whole proceedings, together with the opinion of the said inferior Court on such cases, the decision of which Court shall in every instance be final, and certificates of these decisions shall be furnished by the Court of Sadr Adalat to the Governor in Council, for the guidance of the Board of Revenue.

Court to take evidence, and transmit proceedings and opinion.

Exemption of females from appearance in Court.

Fifth.—Provided that females shall be at liberty to avail themselves, at their own risk, of the law and of the usages of the country to avoid personal appearance in Court.

Procedure where lunatic is restored to sanity.

Sixth.—Provided also, that in cases of lunacy or idiotism where reason may exist for supposing the cause of the malady removed, it shall be competent for the parties concerned to appear, or for the inferior Courts to bring the said parties, before the Courts of Adalat from time to time, and upon due proof of the removal of the disqualification the inferior Courts shall observe the process hereinbefore described for bringing such cases under the Court of Sadr Adalat.

¹ See Act IX of 1875.

² So much of ss. 6 and 7 as relates to lunatics or idiots has been repealed by Act XXXV of 1858, s. 1.

³ Certain words, repealed by Act XII of 1876, have been omitted. The reference to s. 6 in the repeal Schedule is an error. It should be s. 7.

8. First.—Where the property of persons incapacitated as aforesaid may, on the decision of the Governor in Council, be committed to the care of the Court of Wards, the said Court shall select and nominate persons duly qualified to manage the affairs of persons so situated.

Management of property of persons incapacitated.

Collectors to recommend proper persons.

Second.—Females shall be free to include or exclude (as they may themselves see fit) their own husbands in their recommendation of persons to be appointed managers of their separate property.

Females may recommend their husbands to be managers.

Third.—The aforesaid recommendations, being duly made, shall be accepted by the Court of Wards; provided that, when the said Court shall see due and sufficient reason to reject such recommendations, the cases respectively shall be finally decided by the Governor in Council.

Recommendations to be accepted by the Court of Wards.

9. Persons being guardians of minors shall not in any case be eligible to be appointed managers of the property of the said minors.

Guardians of minors not to be appointed managers of their property.

10. Persons appointed to manage the property of incapacitated persons shall give good and sufficient security for their personal appearance during the course of their management, and shall execute the following obligation: that is to say,

Managers of property of incapacitated persons to give security.

"I, A B, having voluntarily taken upon myself the management of the property of C, incapacitated proprietor of D, do hereby solemnly promise and engage to manage the said property diligently and faithfully for the said proprietor, and to use all the means in my power to improve the property for the benefit of the owner. I also promise and engage to render a true and just account of my administration, and to be answerable for all embezzlement or misapplication of the property, to the extent of three times the amount which may be proven to have been embezzled or misapplied during my management. And I further engage to adhere to such Regulations, as have been or may hereafter be, framed for the guidance of managers by the Court of Wards, and to abstain from all other advantage, directly or indirectly, than the allowance granted to me from the property committed to my charge under the authority of the Court of Wards."

Obligation to be executed.

11. First.—Managers, having executed the aforesaid obligation, shall be furnished by the Collectors respectively with public commissions of management, under the seals and signatures of the said Collectors.

Managers to be furnished with commission.

Second.—An allowance (to be specified in the commission) shall be granted to managers, which shall be proportioned to the extent of the trust, and shall be fixed by the Court of Wards, on the recommendation of Collectors as adequate compensation for the trouble and responsibility of the management.

Allowance to managers.

Third.—The Court of Wards shall possess authority, in cases where managers may be proven to have abused their trust, to enforce the penalty of the obligation, and to dismiss such managers from their charge; provided that all such amercement shall be carried to the account of the property in trust.

Fourth.—But such decisions of the Court of Wards shall not preclude managers who may consider themselves to be aggrieved from instituting suits in the Courts of Adalat for the recovery of the amount of the said penalty.

Suits to recover penalty.

Fifth.—Managers shall have power to nominate the several officers, and to appoint their salaries, requisite for the administration of property in trust, subject, however, to the revision of Collectors, and to the final confirmation or rejection of the Court of Wards.

Managers to nominate officers, subject to revision and confirmation.

Sixth.—Subordinate officers so chosen and appointed shall, upon proof of delinquency, be liable to punishment in the same manner as the principal managers.

Punishment of subordinate officers.

12. *First.*—Managers duly appointed shall have the entire charge of the estates, real and personal, of the incapacitated proprietors, including all málguzári and lákhiráj lands; and all houses, tenements, goods and moveable property, excepting only the house in which the proprietors may reside, together with the articles of moveable property required for the use and comfort of the said proprietors.

Managers to have charge of estates.

Exception.

Second.—On receiving charge of their trust, managers shall furnish an exact inventory under their seals and signature, to be lodged with the Collector of the property which may be committed to their custody.

To furnish inventory.

Third.—At the expiration of every year, managers shall deliver to the Collectors, respectively, true and faithful accounts of their receipts and disbursements; and the said Collectors shall be responsible for the due appropriation of the surplus funds in the manner hereinafter provided.

To furnish annual accounts.

Assessment of lands of incapacitated persons.

13. The assessment of lands being the property of incapacitated persons shall be fixed in the same manner as the assessment of other lands.

14. *First.*—The entire sums of money received by managers from the lands under their charge shall be paid monthly to the Collectors, who shall defray therefrom the authorized expenses of management.

Receipts to be paid monthly to Collectors.

Second.—A sum equal to ten per cent. of the permanent assessment, or, when the whole permanent jamá may not be realized, a sum equal to ten per cent. of the revenue actually paid to Government, shall be allotted to the support of disqualified possessors of property, and of such parts of their families as may be entitled to maintenance at their expense.

Third.—The said allowance shall be paid monthly by the Collectors to the proprietors, or (as the case may be) to the guardians of the proprietors, for their use in the proportion of the public revenue actually received from the section.

Allowance to be paid monthly.

Fourth.—The lands of incapacitated proprietors shall not be answerable for the payment of the public revenue assessed thereon; and if the net collections of any year should prove unequal to the discharge of the fixed assessment, the deficiency shall be made good by the surplus collections of future years; provided always, that the allowance for the support of the proprietors shall be paid as well in years of deficient as of surplus produce.

Fifth.—Where the said proportion of ten per cent. of the public revenue may afford a fund greater than shall be requisite for the suitable expenses of disqualified possessors of property and of their families, or where the same effect may be produced by the accumulation of property not assessed, it shall be competent for Collectors to reduce at their discretion the said proportion of ten per cent.; and where the said proportion of ten per cent. together with the produce of the unassessed property of incapacitated possessors shall be inadequate to the due support of the parties concerned, it shall also be competent for Collectors at their discretion to augment the proportion payable from málguzári lands: Provided, however, that the exercise of the discretionary power shall be reported to the Court of Wards, and shall not be repeated after the first month without due authority had and obtained for the same.

Sixth.—Where the proportion of ten per cent. may be reduced, the difference shall be incorporated in the assets of the property, and employed for the benefit of the owners.

15. It shall not be competent for managers of the property of minors to grant leases extending beyond the period of one year, without the consent of the Collector had in writing; nor to dispose of any part of the property without the permission of the Court of Wards also obtained in writing.

^a As to the estates of minors let under the Court of Wards, see Mad. Reg. X of 1831, s. 2, cl. 1.

16. *First.*—Where estates, being the property of incapacitated owners, may yield under management funds more than adequate to the payment of the public revenue, to the charges of management and to the expense of maintaining the said owners, it shall be competent for the Collectors to employ such surplus funds for the purpose of improving the said property, or in the purchase of land, or in the purchase of the public securities of Government; provided that such appropriation to be made of the said surplus funds shall have been previously approved in writing by the Court of Wards.

Appropriation of surplus receipts.

Second.—In cases of purchasing as aforesaid, the Collectors shall transmit the deeds of security, of whatever description, to the Court of Wards, for the purpose of being deposited in the treasury of Government.

In cases of purchases, Collectors to send security-deeds to Court of Wards.

Third.—Receipts shall be granted by Collectors to managers for such deeds of security on account of the owners as may be deposited in the public treasury, and such deposits shall be at the risk of Government.

Receipts to be granted by Collectors to managers.

Fourth.—The interest-money accruing on the public securities which may be purchased on account of incapacitated possessors of property shall be receivable by the Collectors respectively, to whom it shall be competent to grant discharges from the same.

Interest on public securities purchased for disqualified landholders repaid by Collectors.

17. Where debts may be due to private creditors from the estates of disqualified proprietors, they shall be liquidated by the Collectors respectively on the due substantiation of the said debts, and on demand of payment by the creditors;

Private debts of disqualified landholders to be paid by Collectors.

provided always that the discharge of private debts shall not in any case interfere with the regular and complete payment of the public revenue assessed on such estates; and provided further that the permission of the Court of Wards in writing shall have been had and obtained in every instance previously to the payment of any private debt.

18. Where persons succeeding by right of inheritance to land or other property paying revenue directly to Government may happen to be incapacitated, by reason of sex, minority or natural infirmity, from the management of such property on their own behalf, Collectors shall respectively accompany their reports of such cases to the Court of Wards with a description of the conditions of the persons concerned, the value of the property devolving to them and the names of persons most proper, in the judgment of them (the Collectors), to be appointed guardians of the disqualified heirs; provided that guardians may not have been appointed for such disqualified heirs according to the will of persons authorized by law to make such appointment.

19. *First.*—The Court of Wards shall proceed, according to the mode hereinbefore provided for the nomination of managers, to choose and appoint guardians of the disqualified persons.

Court to appoint guardians.

Next legal heir not to be appointed.

Second.—The next legal heir shall not in any case whatever be appointed guardian of a disqualified person.

Third.—Persons who may appear to have a direct or indirect advantage in the death or continued incapacity of the disqualified possessors of property shall not in any case whatever be appointed to be guardians of such disqualified possessors.

Female guardians.

Fourth.—Guardians of the female sex shall be appointed to female minors, and not otherwise.

Fifth.—Possessors of property paying revenue directly to Government whose heirs may be incapacitated by sex, minority or natural infirmity from managing such property shall be free to choose and to nominate by will in writing persons to be guardians of their heirs; and such nominations shall be valid, provided that the persons chosen shall be qualified and willing to accept the trust; and provided further that such nominations shall be duly reported by the Collector, and finally confirmed by the Court of Wards.

Appointment of guardians of incapacitated heirs.

20. Repealed by Act VIII of 1890.

21. *First.*—Persons appointed to be guardians and accepting the trust shall give security for their personal appearance during the continuance of the said trust, and shall execute an obligation according to the following form; that is to say,

Security to be given by guardians.

"1. *A B*, having voluntarily accepted the office of guardian of *C*, being the disqualified proprietor of *D*, do hereby solemnly promise and engage to execute the duties committed to me zealously and faithfully, to the best of my judgment, and according to the Regulations; I will conscientiously appropriate the allowance granted for the maintenance and (if the ward be a minor) for the education of my ward to the benefit of the said ward; and will abstain from all other advantage than what may be allowed to me by due authority, directly or indirectly arising from my office of guardian; I also engage to render true and faithful accounts of all moneys received by me on account of my ward, under the penalty of forfeiting treble the amount of any sums which may be proven to have been embezzled or misapplied; and I do hereby bind myself, my heirs and successors, to make good the said penalty upon due proof of my default."

Guardians to be invested with their trust by public commission.

Second.—Where persons may not be found

Salary to be allowed to guardians.

Wards, or of the Zila Courts respectively, as the case may be, as a full compensation for the trouble and responsibility of the said office.

Third.—It shall be competent to guardians regularly appointed to receive the allowance appropriated to the use of their wards, and to appropriate the said allowance at their discretion for the good and benefit of the wards, subject, however, to the inspection and control of the Collectors and Judges of the Zilas, and ultimately of the Court of Wards and of the Court of Sadr Adalat.

Guardians to receive and apply allowance appropriated to use of wards.

Fourth.—Guardians appointed under the authority of Judges of Zilas and of the Court of Wards shall possess the same powers as guardians otherwise appointed.

Powers of guardians appointed by Court.

Fifth.—The duration of the office of guardian shall not continue longer than the eighteenth year of the age of wards being minors, provided that such wards may not be incapacitated by sex or natural infirmity from administering their own affairs.

Duration of office of guardians.

Sixth.—Guardians shall choose and recommend proper servants to be employed in the service of their wards, subject to the approval of Collectors of Zilas and of the Court of Wards, or, as the case may be, to the approval of the Zila Judges and of the Court of Sadr Adalat; provided that the expense of the wages of such servants shall be defrayed from the funds appointed for the maintenance of wards.

Guardians to recommend proper servants for wards.

Wages of such servants.

Monthly accounts.

Eighth.^a—Guardians shall also furnish complete annual accounts to the Collectors supported by good and true vouchers, and attested on oath, unless the Court of Wards shall see proper to dispense with such oath, in which case such annual accounts shall be attested by a solemn declaration of their correctness.

Annual accounts.

Ninth.—In cases of male minors, female relations shall not have charge of such minors after they shall have respectively attained the age of seven years; at which age proper teachers shall be procured and appointed by the guardians for the education of their wards in a manner suitable to their rank and condition in life; provided that the appointment of the said teachers shall be subject to the approval of the Court of Wards, or, as the case may be, of the Court of Sadr Adalat; and provided further that the progress of the education of male minors shall be at all times liable to the inquiries and inspection of Collectors, or, as the case may be, of Judges of Zilas.

Education of minors.

Tenth.—The guardians of female minors shall also provide for the proper education of their wards.

Guardians of female minors.

^a So much of this clause as requires guardians to attest their accounts on oath is repealed by Mad. Act II of 1869.

22. The guardians and managers of disqualified persons shall authenticate papers by their own seals and signatures, and not otherwise.

Seals of wards and of deceased parents.

The seals of wards, together with the seal of their deceased parents, shall be delivered to the Collectors and lodged in their treasuries.

23. *First.*—Disqualified persons being in the custody of guardians shall not be liable to be sued on any action in Courts of Judicature otherwise than as under the protection and in the joint name of their guardians.

Disqualified persons how sued.

Second.—But in cases of fraud, or supposed fraud, it shall be competent for disqualified persons, during the period of their disqualification, to employ proper agents to prosecute Collectors, guardians or managers before the Court of Wards; provided that such agents shall give due security for costs and damages; and provided further that such agents shall receive the fines and costs which may be awarded.

When disqualified landholders may prosecute Collectors, &c., before Court of Wards.

24. *First.*—In cases of fraud imputed to guardians or managers, it shall be competent for the Court of Wards to order inquiry to be made in the first instance by the Collectors, and to pass judgment on the result of such inquiries.

Inquiry into conduct of guardians and managers.

Second.—In such cases, where the attendance of witnesses may be required, the Collectors or the Court of Wards shall apply by writing to the Courts of Zilas, to the end that the said witnesses may be duly summoned to attend.¹

Procedure when witnesses are required by Court of Wards.

Third.—Copies, duly authenticated, of the judgment of the Court of Wards shall be transmitted to the Zila Courts respectively; and the said judgments shall be enforced in the same manner as if passed originally by the said Zila Courts.

Copies of judgments of Court of Wards to be sent to Zila Courts.

Fourth.—An appeal shall lie from such judgments directly to the Sadr Adalat, provided that the appeal be preferred to the Court of Wards, or to the Zila Courts, or to the Sadr Adalat, within three calendar months next subsequent to the date of judgment.

Appeal to Sadr Adalat.

Fifth.—It shall nevertheless be competent for the Court of Sadr Adalat to dispense with the said limitation with respect to appeals preferred to the Sadr Adalat only, upon good and reasonable grounds shown for the delay.

Power to dispense with limitation.

Disqualified landholders not to adopt without consent of Court of Wards.

25. It shall not be competent for disqualified landholders to adopt children without the consent of the Court of Wards previously had in writing.

26. Collectors, managers and guardians shall be respectively liable to be sued in the Courts of Judicature for acts done by them respectively, with respect to the abuse of the property or persons of disqualified persons during the period of disqualification; and in cases where the property of incapacitated persons may have been restored to them or their heirs and successors, to institute process against Collectors, managers and guardians for the recovery of damages from those Collectors, managers and guardians respectively, for injuries sustained by them or by their property during the time of their incapacity.

Collectors, managers and guardians liable to be sued.

27. Such suits as may be instituted against Collectors by virtue of this Regulation shall be defended at the proper costs of the said Collectors; provided that the acts and things for which they may be so prosecuted shall not have been authorized in writing by the Court of Wards.

Suits against Collectors under this Regulation when to be defended at their proper costs.

¹ Certain words, repealed by Act XII of 1876, have been omitted.

REGULATION X OF 1831.¹*Passed on the 2nd of September, 1831.*

A Regulation to prohibit the sale of estates belonging to Minors not under the charge of the Court of Wards, and to extend the provisions of section 20, Regulation V, 1804, to property of every description not subject to the jurisdiction of that Court.

WHEREAS doubts have been entertained as to the liability of the estate of a minor, not taken under the management of the Court of Wards, to be sold for arrears of revenue; and whereas it is considered expedient, for the due protection of the property of minors and other incapacitated persons, that the provisions of section 20, Regulation V, 1804, should be extended to property of every description not subject to the jurisdiction of that Court, the following rules have been enacted:²

Preamble.

2. *First*.—From and after the date of the promulgation of this Regulation, no estate, the property of a minor, and descended to him by the regular course of inheritance, not under the charge of the Court of Wards, shall, during his minority, be sold for arrears of revenue accruing subsequently to his accession to the same.

Second.—It shall be competent to the Court of Wards to assume charge of such estates at any time during the minority of the proprietor, notwithstanding they may have originally refrained from interfering.

3^a. The provisions of sections 20, 21 and 22, Regulation V, 1804,³ shall be extended to property of every description, not subject to the jurisdiction of the Court of Wards, and to the heirs of single as well as joint possessors of estates, real and personal.

ACT No. XXI OF 1855.⁴*Received the Governor-General's assent on the 9th of August, 1855.*

An Act for making better provision for the education of male minors and the marriage of male and female minors subject to the superintendence of the Court of Wards in the Presidency of Fort St. George.

WHEREAS the existing laws are found insufficient to insure the proper education of male minors subject to the superintendence of the Court of Wards, and it is expedient to make further and better provision for the education of such persons and their younger brothers, and for the exercise of a control over the marriages of all minors under the superintendence of the Court of Wards; It is enacted as follows:—

Preamble.

1. The general superintendence and control of the education of every male minor, whose property has been or shall be brought under the management of the Court of Wards, in and for any part of the Presidency of Fort St. George, by virtue of any Act or Regulation which now is or hereafter shall be in force, is hereby vested in the Collector of Revenue, acting under the said Court of Wards, in the Zila or district wherein such minor's estate is situate; or, if such minor is possessed of immoveable property in different districts, in such one of the Collectors of Revenue of such districts as the said Court of Wards shall select.

2. It shall be lawful for every Collector of Revenue, in whom the superintendence of the education of any minor is vested by this Act, to direct that such minor shall reside, either with or without his guardian, at the sadr station of the district, or at any other place within the said Presidency, and shall attend for the purposes of education such school or college as to the said Collector may seem expedient; and to make such provision as may be necessary for the proper care and suitable maintenance of the said minor whilst attending such school or college.

¹ Declared to be in force in the whole of the Madras Presidency except as regards the Scheduled Districts—see Act XV of 1874, s. 4. As regards the country of Rampa, and the taluqs of Bhadrachalam and Rakapilli, see Appendix.

² Certain words, repealed by Act XII of 1876, have been omitted.

³ Declared to be in force in the whole of the Madras Presidency except as regards the Scheduled Districts—see Act XV of 1874, s. 4. As to the extension of the provisions of this Act to minors not subject to the Court of Wards, see Act XIV of 1858.

3. If it shall appear to the Collector inexpedient to place any such minor at a school or college, he shall cause such minor to be educated by a private tutor, properly qualified, either at the family residence of such minor, or at the sadr station, or elsewhere within the said Presidency, and in that case also the Collector shall have power to determine from time to time the place of residence of such minor, and to make such provision as may be necessary for his proper tuition and maintenance during the period of his education.

or, in certain cases, by private tutor.

4. All charges and expenses which may be incurred on account of any male minor ward under the provisions of this Act, for college or school fees or for other charges of tuition or education, or by reason of his residence in any place other than his own home, or otherwise, shall be defrayed from the profits of his estate, in the same manner as other expenses incurred under the authority or with the sanction of the Court of Wards.

Charges incurred under Act to be paid out of profits of ward's estate.

5. It shall be lawful for the Court of Wards, on the application of a Collector, to remove from office any guardian who shall neglect or refuse to obey, or shall evade compliance with, any orders passed or directions given by such Collector under the provisions of this Act, and to cause a new guardian to be appointed in his place, whether the person so removed shall have been first invested with the guardianship of the minor upon the nomination of a Collector acting under the Court of Wards, or by a testamentary appointment confirmed by the Court of Wards.

Court of Wards may remove guardians for disobedience to orders passed by Collector.

6. The guardian so removed shall, notwithstanding his removal, continue liable to account to the Collector for his receipts and disbursements during the period of his guardianship, and every guardian appointed in the place of a guardian so removed shall be chosen in the same way, and shall have the same rights and powers, and be subject to the same responsibilities, as persons originally appointed to be guardians of minors by a Collector of Revenue acting under the Court of Wards.

Liability of guardian removed. Powers and responsibilities of new guardian.

7. The right to the custody of the person of any male minor whose property is under the management of the Court of Wards is hereby vested in the person appointed with the sanction of the Court of Wards, either originally or upon the removal of a former guardian, to be the guardian of such minor, or, in the absence of any such person, the Collector of Revenue having the superintendence of the education of such minor under the provisions of this Act.

Right to custody of person of male minor.

8. Whenever a minor whose property is under the management of the Court of Wards has a younger brother or brothers entitled to maintenance at the charge of the estate, all the powers and provisions hereinbefore contained for promoting the education of such minor, are hereby declared and made applicable to such younger brother or brothers.

Foregoing sections applied to younger brothers of wards.

9. Whoever knowingly aids or abets the marriage of any minor whose property is under the superintendence of the Court of Wards, or the marriage of a younger brother or sister of such minor, without the leave of the Collector of Revenue acting under the Court of Wards to such marriage first had and obtained, shall, on conviction before a Court of Session, upon the prosecution of such Collector, be liable to a fine not exceeding two thousand rupees, or to imprisonment not exceeding the term of six months, with or without hard labour.

Penalty for abetting marriage of ward without leave of Collector.

10. All orders and proceedings of a Collector under the provisions of this Act shall be subject to the revision of the Court of Wards, and every person aggrieved by any such order or proceeding may prefer an appeal therefrom to the Court of Wards.

Appeal from orders of Collector to lie to Court of Wards.

No. I OF 1875.

A
BILL.

TO

Amend and Consolidate the Law relating to the Court of Wards, and to disqualified persons.

(As amended by the Select Committee.)

Short title.

1. This Act may be called "The Court of Wards Act, 1875."

Extent.

It extends to the territories subject to the Governor of Fort St. George in Council, but not so as to interfere with the original jurisdiction of the High Court.

Commencement.

And it shall come into force on the passing thereof.

2. The enactments mentioned in the Schedule hereto are repealed to the extent mentioned in the third column thereof.

Reg. V of 1804, s. 2.

3. The Court of Wards shall consist of the Members of the Board of Revenue for the time being.

Reg. V of 1804, s. 2.

4. For the purposes of this Act, the following persons shall be deemed disqualified for the management of property:—

(a) Females.

(b) Minors.

(c) Persons found to be lunatics under Act XXXV of 1858.

Act XIX of 1873, s. 194.

(d) Persons who are, in the opinion of the Governor in Council, rendered incapable, by physical defect or infirmity, of managing their own estates;

(e) Persons convicted of a non-bailable offence and disqualified, in the opinion of the Governor in Council, by vice or bad character, for the management of property.

(f) Persons declared by the Governor in Council, on their application, to be disqualified for the management of property.

Such persons are hereinafter described as "disqualified."

5 In this Act, unless there be something repugnant in the subject or context—

words importing the masculine gender shall be taken to include females.

Gender.

"The Collector" means the Collector in charge of the estate to which reference is being made.

Collector.

"The Court" means the Court of Wards.

"Ward" means a person who has been made a Ward of Court under section 13.

"Manager" means a person appointed to be Manager of a Ward's estate under section 21.

"Guardian" means a person appointed to be Guardian of a Ward under section 23.

PART I.

DISQUALIFIED PERSONS SUBJECT TO THE JURISDICTION OF THE COURT OF WARDS.

Reg. V of 1804, s. 2.

6. Whenever a disqualified person is the owner of immoveable property, charged with payment of revenue to Government, or

(b) the annual rent value whereof is Rupees one thousand and upwards,

the Court of Wards may control and superintend such person and property.

Every such person is said to be "subject to the jurisdiction of the Court."

For the purpose of this section, the rent value of property shall be determined by the Collector in the manner prescribed in Section 38 of the "Local Funds Act," or in any enactment by which that section is replaced.

Exceptions.

(1) No person who is a member of an undivided Hindu family some member of which is not disqualified within the meaning of Section 4, is subject to the jurisdiction of the Court; but if all the members of any such family are disqualified, they are all subject to the jurisdiction of the Court until one of them ceases to be disqualified.

(2) No person who owns, jointly or in common with one other person or more, property subject to an undivided assessment of land revenue, is subject to the jurisdiction of the Court, if any one of such persons is not disqualified within the meaning of Section 4; but if all the persons so owning are disqualified, they are subject to the jurisdiction of the Court until one of them ceases to be disqualified.

7. A disqualified person, over whom the Court exercises its powers of control and superintendence, is said to be a "Ward of Court."

The property of such Ward of Court is said to be "under the control of the Court."

8. The Collector may, for the purposes of this Act, hold an inquiry into the age, sex, capacity, and circumstances of any person, who owns property within his district, and whom he has reason to believe to be disqualified, and may summon any such person before him; and, in conducting such inquiry, may exercise all or any of the powers of summoning and examining witnesses and calling for the production of documents which are conferred on a Civil Court by any law regulating Civil Procedure for the time being.

9. The Collector may, in any case in which he is empowered to hold an inquiry as to any person under the last preceding section, forthwith take such measures as he considers necessary for the protection of the estate of such person, either by appointing a Receiver and Manager, or by causing a statement of such person's moveable and immoveable property to be prepared, or books to be examined, or otherwise.

10. If, either upon such inquiry or otherwise, the Collector has reason to believe that any person in his district has become subject to the jurisdiction of the Court, he shall forthwith, in the case of an estate charged with payment of revenue to the Government to the amount of Rupees 500 or upwards,

and may, in the case of all other estates, forward a report of the case to the Court. Such report shall set forth all the circumstances of the case, specifying—

- (a) the age and sex of such person,
- (b) the nature and value of the property of which such person is owner,
- (c) whether it is, in the Collector's opinion, desirable for the Court to take the property under its control;
- (d) whether, in the case of a female, she may be permitted to have the management of the property, and
- (e) the name of the person most proper, in the judgment of the Collector, to be appointed guardian of the disqualified person;
- (f) whether any guardian of the disqualified person has been appointed by Will or otherwise.

11. In any case in which a guardian has been appointed by the Will of any person authorized by law to make such appointment, the Collector's report shall state whether the appointment is, in his opinion, a fitting one.

The Court may, if it see fit, appoint any other guardian than the guardian so appointed.

12. The Court shall submit the case, with its recommendation, for the orders of the Governor in Council; but, pending such orders, all instructions, issued by the Court on the Collector's report for the protection of the property and its owner, shall be binding.

13. If the Governor in Council so directs, the disqualified person shall become a Ward of Court; and the Court shall thereupon give such orders as it thinks fit for the maintenance of the Ward and of such members of his family as are entitled to maintenance at his expense.

Reg. V of 1804, s. 3.

Bengal Act IV of 1870, s. 31.

N. W. P. Act XIX of 1873, s. 199.

Reg. V of 1804, s. 3.

Reg. X of 1831, s. 2, cl. 2.

14. The Court may, at any time, with the previous sanction of the Governor in Council, make any person, who is subject to its jurisdiction, a Ward of Court, notwithstanding that no report has been transmitted by the Collector, or notwithstanding that the Court did not, when such person first became subject to the Court's jurisdiction, make him a Ward of Court.

15. The Court may at any time, with the like sanction, withdraw from the control and superintendence of any person and property; and such person shall thereupon cease to be a Ward of Court.

16. The Court may, with the like sanction, resume the control and management of any such person and property at any time, so long as such person remains subject to the jurisdiction of the Court.

17. Whenever a Ward of Court owns property in more districts than one, the Court may direct that the whole estate of such person shall be under the management of one of the Collectors of such districts, in like manner as though the whole estate were situate in his district.

18. No Ward of Court shall administer his own affairs; or take part in the management of his estate; or alienate, lease, mortgage, or in any manner incumber his estate; or make a contract, or will; or, without the written consent of the Court of Wards previously obtained, either adopt a son or authorize any person to adopt a son on his behalf.

Any such alienation, lease, mortgage, incumbrance, will, contract, adoption or authority to adopt, shall be void for all purposes whatsoever.

19. The Court may charge commission at the rate of one-and-a-half per cent. on the net collections of every estate of a Ward of Court, after deducting all charges except the Government Revenue. This commission shall be carried to the credit of Government.

20. The Court may give leases or farms of the whole or part of any property of a Ward; and may mortgage any part of such property, or, with the sanction of the Governor in Council, sell any part of such property; and may do all such other acts as it judges to be most for the benefit of the Ward and his estate.

Reg. V of 1804, s. 3, cl. 2.

s. 25.

Act XIX of 1873, s. 203.

PART II.

APPOINTMENT OF MANAGERS AND GUARDIANS.

21. The Court shall appoint a Manager for the property of every Ward, and may at any time remove any such Manager and appoint a new Manager in his place.

22. The Court shall assign to the Manager such salary as it deems fit.

23. The Court may appoint one guardian, or more, for every Ward, and may remove any such guardian and appoint a new guardian in his place.

24. The Court may, when it thinks fit, assign to such guardian or guardians such salary as it deems fit.

25. In no case shall the next legal heir of a Ward, or any person who appears to have a direct or indirect advantage in the death or continued disqualification of such Ward, be appointed guardian of such Ward. Provided that the mother of a Ward, or the guardian appointed by the Will of a person authorized to make such appointment, shall be eligible for the office of guardian at the discretion of the Court.

26. If the Ward be a female, her guardian shall also be female, unless for special reasons the Court directs otherwise.

27. The right to the custody of the person of a Ward is vested in the guardian appointed by the Court or, in the absence of any such guardian, in the Collector.

28. Every Manager and Guardian shall, if the Court so direct, before entering upon his duties, execute a bond in the form specified in Schedule II.

29. The sum conditioned in such bond shall be of such amount as the Court directs.

30. All sums recovered from a Manager or Guardian or the representatives of a Manager or Guardian in a suit on any such bond, shall, after payment of all expenses connected therewith, be carried to the credit of the estate of which such Manager or Guardian was in charge.

31. Every Manager and Guardian and other person employed in the management of, or upon the estate of any Ward, or in his service, shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.

Reg. V of 1804, s. 8.

" s. 9, cl. 1.

" s. 20, cl. 2.

" s. 19, cl. 2 and 3.

Bengal Act IV of 1870, s. 55.

Reg. V of 1804, s. 19, cl. 4.

Act XXI of 1855, s. 7.

Reg. V of 1804, s. 10.

" s. 11, cl. 3.

" s. 11, cl. 3.

PART III.

DUTIES OF THE MANAGER.

32. The Manager shall report to the Collector what subordinate officers and servants are necessary for the due management and administration of the Ward's estate, and what salaries should be paid to such officers and servants.

33. All such appointments shall be made and all such salaries shall be fixed by the Collector, subject to revision by the Court; and the Court may cancel any such appointment, or alter any such salary, as it thinks fit.

34. The Manager shall have the entire charge of the property, movable and immovable, of the Ward; but the Collector may set aside such portion of the Ward's property as he thinks necessary for the Ward's maintenance, use, and comfort. The portion of the property so set aside shall be in the exclusive charge of the guardian.

35. The Manager shall, as soon as may be after his appointment, draw up an exact statement of the property committed to his custody. Such statement shall be signed by the Manager and shall be presented to and filed by the Collector.

36. At the expiration of every year, the Manager shall deliver to the Collector an exact statement of his receipts and disbursements for that year on account of the Ward's estate.

37. The Manager is authorized to collect, get in, and recover all moneys due to the Ward's estate, together with such interest as may have accrued thereon.

38. All moneys received by the Manager from the Ward's estate shall be paid monthly to the Collector. The Collector shall defray the authorized expenses of the management of the Ward's estate, and shall dispose of the surplus income of the estate in the manner hereinafter provided.

39. No Manager shall grant a lease of the whole or any part of the Ward's estate for any period exceeding one year, without the sanction, in writing, of the Collector; nor

Reg. V of 1804, s. 11, cl. 5.

" s. 12.

" s. 12, cl. 2.

" s. 12, cl. 3.

" s. 14.

" s. 15.

shall he sell, mortgage, or permanently alienate any part of such estate without the sanction, in writing, of the Court.

Any lease, sale, mortgage or alienation made in contravention of this section shall be void.

PART IV.

DUTIES OF THE GUARDIAN.

40. The guardian shall receive the allowance set aside under Section 34 for the Ward, and shall, subject to the inspection and control of the Collector and the Court, employ such allowance as he thinks best for such Ward's interest.

41. Every guardian appointed under this Act shall, except as otherwise provided in this Act, have the same powers as other guardians.

42. The guardianship of a male minor, who is not disqualified otherwise than by minority, shall terminate on his attaining majority.

43. The guardian shall choose proper servants to be employed in the service of the Ward, subject to the approval of the Collector and of the Court. The wages and expenses of such servants shall be defrayed from the allowance set aside under section 34 for the Ward.

44. The guardian shall deliver to the Collector monthly accounts of his receipts and disbursements; and such accounts shall be liable to revision and retrenchment by the Collector.

45. The guardian shall authenticate all papers relating to such guardianship by his own seal and signature.

If any Ward has, or if any previous owner of the Ward's estate during his lifetime had, a seal, such seal shall, if it be discoverable, be delivered to the Collector and lodged by him in the Treasury.

46. The guardian shall furnish complete annual accounts to the Collector, supported by proper vouchers; and shall append to such accounts a declaration that the same are, to the best of his belief, correct.

47. A guardian removed under this Act shall, notwithstanding his removal, continue liable to account to the Collector for his receipts and disbursements during the period of his guardianship.

Reg. V of 1804, s. 21, cl. 3.

" s. 21, cl. 4.

" s. 21, cl. 6.

" s. 21, cl. 6.

" s. 21, cl. 7.

" s. 22.

" s. 21, cl. 8.

Act XXI of 1855, s. 6.

PART V.

SUITS BY AND AGAINST WARDS.

48. In all suits brought by or against a Ward of Court, the Collector shall be joined as a party with such Ward.

Provided that in suits or proceedings under Madras Act VIII of 1865, or other Act under the provisions of which suits may be heard by or proceedings had before the Collector, the Manager shall be joined in such suits or proceedings in lieu of the Collector.

49. Any Ward who considers himself, or the next friend of any Ward who considers him, to have been aggrieved by the conduct of the Collector, Manager, or Guardian, in the management of his estate, may petition the Court of Wards; and the Court shall pass such orders as it thinks fit; and if required by such Ward, or his next friend, the Court shall submit such petition, together with its orders thereon, to the Governor in Council, whose decision thereon shall be final. Provided that,

(1) Any person who has been made, or who has reason to believe that he is about to be made, a Ward of Court, may file a suit against the Collector for a declaration that he is not subject to the jurisdiction of the Court of Wards:

(2) Any Ward may, with the permission of the Court, bring a suit, by his next friend, against the Collector, Manager, Guardian or any other person by whom he considers himself to have been injured:

(3) Nothing herein contained shall affect the right of any Ward to institute criminal proceedings; or of any person who has ceased to be disqualified, to bring a suit in respect of any matter which occurred while he was disqualified, and which has not been adjudicated in a suit brought on his behalf.

PART VI.

REVENUES OF ESTATES.

50. No property, owned by a minor subject to the jurisdiction of the Court, shall be sold for arrears of land revenue or other tax accruing during his minority.

51. No property shall be liable to sale on account of arrears of land revenue or other tax accruing whilst such estate is under the control of the Court.

52. All arrears of land revenue or other tax accruing on an estate, the sale of which is prohibited under the two last preceding sections, shall, as far as possible, be discharged from the surplus income of the estate in previous years; or by the sale of any securities or other property in which such surplus may have been invested: and in case there be no sufficient surplus or securities or other property, the arrears shall be discharged from any surplus which may subsequently accrue. In case the estate is sold or taken from the Ward by a decree of Civil Court, any arrears of land revenue or other tax then due shall continue to form a charge against such estate.

53. Whenever an estate under the control of the Court yields a surplus after payment of the public revenue, the charges of management and the expense of maintaining the owner and the persons entitled to be maintained at his expense, the Court, or the Collector with the sanction of the Court, may employ such surplus for the purpose of improving such estate, or in the purchase of land, or in loans secured on the mortgage of land, or in the purchase of Government securities, or such other securities, stocks, or shares, guaranteed by the Government of India, as are approved by the Court.

54. Whenever a Collector invests any surplus under the last preceding section, he shall transmit the title-deeds and every other document relating to such investment to the Court, and the Court shall deposit them in the Public Treasury on behalf of the Ward.

55. The Collector shall give to the Manager a receipt for such title-deeds or other documents.

56. The interest accruing on all investments made under Section 53, and on all debts owing to a Ward, shall be receivable by the Court, or by the Collector; and receipts signed by the Collector, or by a Secretary on behalf of the Court, shall be a sufficient discharge to any person paying the same.

57. Debts due to private creditors from an estate under the control of the Court may be paid by the Collector out of the assets of such estate. No such payment shall take precedence of, or interfere with, the regular payment of land revenue or other taxes or dues payable to Government on account of such estate; nor shall any such debt be so paid unless previous permission has been given in writing by the Court.

Reg. V of 1804, s. 16.

s. 16, cl. 2.

s. 16, cl. 4.

s. 17.

PART VII.

EDUCATION AND DISCIPLINE OF WARDS.

Act XXI of 1855, s. 1.

Reg. V of 1804, s. 21, cl. 9.

Act XXI of 1855, s. 2.

58. The Collector shall superintend the education of the Ward.

59. No male Ward shall be left in the charge of female relations after he has completed his seventh year. At that age proper teachers shall be appointed by the Collector, subject to the approval of the Court.

60. The Collector may, with the sanction of the Court, direct that a Ward shall reside, either with, or without, his guardian, at the head station of the district, or at any other place within the Presidency of Fort St George, and that such Ward shall attend for the purpose of education such school or college as to the Collector seems expedient.

The Collector may, with the like sanction, make such provision as is necessary for the proper care and suitable maintenance of the Ward whilst attending such school or college.

61. If it appears to the Collector inexpedient to place the Ward at a school or college, he may cause him to be educated by a private tutor, either at the family residence of the Ward or at the head station, or elsewhere within the said Presidency; and the Collector may determine from time to time the place of residence of such Ward, and may make such provision as he considers necessary for his proper tuition and maintenance during the period of his education.

62. All expenses, so incurred on account of any such Ward for college or school fees, or for other charges of education, or by reason of his residence in any place other than his own home, or otherwise, shall be defrayed from the profits of his estate, in the same manner as other expenses incurred under the authority of the Court.

63. The guardians of female Wards shall provide for their proper education, subject to the control and direction of the Collector and of the Court.

64. Whenever a Ward has a child or younger brother entitled to maintenance at the charge of his estate, all the provisions of this Act as to the education of Wards shall be applicable to such child or brother.

65. Whoever promotes or assists in the marriage of a Ward without leave of Collector.

s. 3.

s. 4.

Reg. V of 1804, s. 21, cl. 10.

Act XXI of 1855, s. 8.

s. 9.

(a) any minor subject to the jurisdiction of the Court,

(b) any younger brother or sister of such minor,

(c) any daughter of a Ward of Court, unless the leave of the Court to such marriage has been first obtained, shall, on conviction before a Court of Session, be punished with a fine not exceeding two thousand rupees, or with imprisonment of either description, as provided by the Indian Penal Code, not exceeding the term of six months.

PART VIII.

DISQUALIFIED PERSONS NOT SUBJECT TO THE JURISDICTION OF COURT, OR NOT WARDS OF COURT.

66. Whenever a disqualified person is the owner of property of the annual value of Rs. 1,000 or upwards, and

(a) is not subject to the jurisdiction of the Court, or

(b) has not been made a Ward of Court, and no legal provision has been made for the management and administration of such person's estate and guardianship of his person, the District Judge may control the person and property of such disqualified person.

67. The exceptions provided in Section 6 shall be applicable to persons who would otherwise be liable to the control of the District Judge under this section.

68. The Collector of the District in which such person's property is situate, shall submit to the District Judge a report similar to that provided in Section 10; and may, for the purposes of such report, exercise all or any of the powers conferred in Section 8.

69. Upon the receipt of such report, the District Judge shall hold an inquiry into the circumstances of the case, and shall nominate forthwith a proper guardian for such person. Such nomination shall be subject on appeal to the confirmation or rejection of the High Court.

70. The District Judge may, at any time, hold an inquiry and appoint such guardian, notwithstanding that no report has been submitted by the Collector, or may at any time call on the Collector to submit such report.

71. If the High Court disallows the nomination, the District Judge shall forthwith nominate another person as such guardian. Such nomination and any further nomination which the orders of the High Court may necessitate, shall be subject to the confirmation or rejection of the High Court.

Act XL of 1858, s. 5.

72. If the property of any such person as is referred to in Section 66 be situate in more districts than one, the District Judge therein referred to shall be the District Judge of the district in which such person has his usual residence, unless the Governor in Council shall otherwise direct.

73. The District Judge may remove any guardian appointed by him, and appoint a new guardian in his place.

Every such substituted appointment shall be subject to the confirmation or rejection of the High Court.

74. Any person claiming a right to have charge of the property of such person, or any relative or friend of such person, may petition the District Judge to hold an inquiry under Section 66: and the District Judge shall thereupon issue notice of the petition and fix a day for hearing the same. On the day so fixed, or as soon after as may be convenient, the District Judge shall inquire into the circumstances and shall pass orders in the case.

75. The guardian appointed under Section 69 shall have charge of the person and estate of the disqualified owner: and the District Judge shall grant to him a certificate of administration of the estate. A guardian, to whom such certificate is granted for any estate, may be called the administrator of such estate, and is hereinafter called "the Administrator."

76. All sums received by an administrator or appointed under Section 75, on account of any estate, in excess of what may be required for the current expenses of the disqualified person or of the estate, shall be paid into the Public Treasury on account of the estate, and shall be invested from time to time in the public securities.

77. The administrator shall be bound to give in his accounts of receipts and expenditure of all moneys received by him at such time or times as the District Judge may direct, under a penalty of 500 rupees for failing to do so.

78. Such administrator shall also execute a bond similar to that required by Section 28 of this Act.

79. Every person to whom a certificate shall have been granted under Section 75, may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a disqualified person, and may collect and pay all just claims, debts, and liabilities due to, or by, the estate of the disqualified person. But no such person shall have power to sell or

s. 6.

s. 7.

s. 17.

s. 22.

s. 18.

mortgage any immovable property or grant a lease thereof for any period exceeding five years, without an order of the District Judge previously obtained.

80. It shall be lawful for any relative or friend of a disqualified person, at any time during the continuance of the disqualification, to sue for an account from any person to whom a certificate shall have been granted under section 75, or from his personal representative in case of his death, in respect of any estate then or formerly under his care or management, or of any sums of money or other property received by him on account of such estate.

81. If the disqualification of a person for whose benefit a suit shall have been instituted under this Act, cease before the final decision thereof, it shall be lawful for such person to continue the suit on his own behalf.

82. The District Judge may, for any sufficient cause, recall any certificate granted under this Act, and may direct the Collector or any other person to take charge of the estate, and may compel the person whose certificate has been recalled to make over the property in his hands to his successor, and to account to such successor for all moneys received and disbursed by him.

83. Every guardian appointed by the District Judge, who shall have charge of any male minor shall be bound to provide for his education in a suitable manner. The general superintendence and contr'l of the education of all such minors shall be vested in the District Judge; and the provisions of Part VII of this Act shall, so far as is possible, be applicable to the District Judge in respect to such minors, and to every such guardian.

84. Nothing in this Act shall authorize the appointment of a guardian of the person of a female whose husband is not a minor, or the appointment of a guardian of the person of any minor whose father is living and is not a minor. If a guardian of the person of a minor be appointed during the minority of the father or husband of the minor, the guardianship shall cease as soon as the father or husband, as the case may be, shall attain the age of majority.

85. Every order passed by the District Judge under this Act shall be open to appeal as if it were a decree of a Civil Court.

86. Nothing in this Act shall affect the validity of any proceeding, act, or order had, done, or made, previous to the passing of this Act.

Act XL of 1858, s. 19.

s. 20.

s. 21.

s. 25.

s. 27.

s. 28.

Schedule I referred to in Section 2.

Year and number.	Title.	Extent of Repeal.
Regulation V of 1804.	A Regulation for constituting a Court of Wards, for declaring the powers vested in the said Court, and for defining the rules under which those powers are to be exercised.	The whole.
Regulation X of 1831.	A regulation to prohibit the sale of estates belonging to minors not under the charge of the Court of Wards, and to extend the provisions of Section 20, Regulation V of 1804, to property of every description not subject to the jurisdiction of that Court.	Do.
Act XXI of 1855	An Act for making better provision for the education of male minors and the marriage of male and female minors, subject to the superintendence of the Court of Wards in the Presidency of Fort St. George.	Do.

Schedule II referred to in Section 28.

Form.

I, A B, having been appointed Manager of the Estate of ———, declare that, in consideration of such appointment, I am bound to the Collector of ——— for the time being in the sum of Rupees ———, and that I or my representatives will, on demand, pay that sum to the Collector of ——— for the time being. The condition of this bond is that if, at all times during my continuance in the said appointment, I faithfully discharge all duties connected therewith or incidental thereto, and properly account for all moneys and effects of such estate which at any time may come into my hands or under my control, and duly carry out all orders of the Court of Wards or the Collector, and furnish all such accounts and returns as are required from me by the Court of Wards, the Collector, or other competent authority, then this bond shall be void; but in any other case it shall remain in full force.

ACT No. IX OF 1879¹.

Received the Lieutenant-Governor's assent on the 15th April 1879, and the Governor-General's assent on the 6th June 1879.

An Act to amend the law relating to the Court of Wards.

WHEREAS it is expedient to amend the law relating to the Court of Wards within the territories under the administration of the Lieutenant-Governor of Bengal; it is enacted as follows:—

Preamble.

PART I.

PRELIMINARY.

Short title.

1. This Act may be called the Court of Wards' Act, 1879: It extends to all the territories under the administration of the Lieutenant-Governor of Bengal, including the Scheduled Districts of Bengal as defined in the Scheduled Districts Act, 1874²;

Extent.

Commencement.

It shall come into force from the date³ on which it may be published in the Calcutta Gazette with the assent of the Governor-General.

¹This Act has been declared in force in the Sonthal Pergunnahs by Reg. III of 1872, s. 3, as amended by Reg. III of 1886, s. 2; also in the Districts of Hazáribágh, Lonardugga and Manbhoom, Pergunnah Dhalbhoom and the Kolhan, under s. 3 of the Scheduled Districts Act, 1874—see Vol. I, p. 679; it has also been extended to the Districts of Sylhet, Cachar and Goalpara under s. 5 of the Scheduled Districts Act—see Appendix to Assam Supplement. Ben. Act III of 1881 is (in Bengal and the District of Sylhet) to be read with and taken as part of this Act—see Ben. Act III of 1881, s. 1, *infra*, p. 604.
²See General Acts, 1867—76, 2nd Ed., p. 478.
³*i.e.*, the 30th July, 1879.

2. Bengal Act IV of 1870 (the Court of Wards' Act), section 11 of Act XXXV of 1858¹ sections 12, 14 and 15 of Act XL of 1858², and so much of section 21 of Act XL of 1858² as provides that the Civil Court may direct the

Repeal of Acts.

Collector to take charge of an estate, are hereby repealed.

All persons and properties which at the commencement of this Act are under the charge of the Court of Wards as constituted by Bengal Act IV of 1870 shall be deemed to be under the charge of the Court of Wards as constituted by this Act.

And all persons and properties which at the commencement of this Act are under the charge of the Collector by virtue of an order of the Civil Court under section 11 of Act XXXV of 1858¹ or under section 12, section 14 or section 21 of Act XL of 1858² shall from such commencement be deemed to be under the charge of the Court of Wards.

And all rules prescribed, orders or appointments made, and agreements executed under the Court of Wards' Act, 1870, and now in force, shall (so far as they are consistent with this Act) be deemed to be respectively prescribed, made and executed under this Act.

And all orders and appointments made by Collectors under Act XXXV of 1858¹ or Act XL of 1858² and now in force, shall (so far as they are consistent with this Act) be deemed to be made under this Act.

And all suits and proceedings now pending, which may have been commenced under the Court of Wards' Act, 1870, or by Collectors under Act XXXV of 1858¹ or Act XL of 1858², shall be deemed to be commenced under this Act.

Ben. IV of 1870.

Interpretation.

"Collector."

"Court."

or, when the Court of Wards as delegated any of its powers to a Commissioner or Collector or any other person, it means, in respect of such powers, the Commissioner or Collector or person to whom they are delegated:

"estate" means all lands which are borne on the revenue-roll of a Collector as liable for the payment of one and the same demand of land-revenue:

"Estate."

"Minor."

"Section."

"Ward."

"minor" means a person who has not completed his age of twenty-one years:

"section" means a section of this Act:

"ward" means any person who is under the charge of the Court of Wards, or whose property is under such charge.

4. Nothing contained in this Act shall affect any of the provisions of the Act XXXIV of 1858³, or the jurisdiction, as respects infants, of any High Court of Judicature.

Saving of Act XXXIV of 1858 and of jurisdiction of High Courts.

PART II.

CONSTITUTION, JURISDICTION AND POWERS OF THE COURT OF WARDS.

Board of Revenue to be Court of Wards.

5. The Board of Revenue shall be the Court of Wards for the territories to which this Act extends.

It shall deal with every person and every property of which it may take or retain charge under this Act, or which may be placed under its charge by order of a competent Court, in accordance with the provisions of this Act.

Disqualified proprietors.

6. Proprietors of estates shall be held disqualified to manage their own property when they are—

- females declared by the Court incompetent to manage their own property;
- persons declared by the Court to be minors;
- persons adjudged by a competent Civil Court to be of unsound mind, and incapable of managing their affairs;
- persons adjudged by a competent Civil Court to be otherwise rendered incapable by physical defects or infirmities of managing their own property.

¹ For Act XXXV of 1858, see General Acts, 1834—66, 2nd Ed., p. 142.

² For Act XL of 1858, see Vol. I, p. 32.

³ See General Acts, 1834—66, 2nd Ed., p. 135.

7. Whenever the sole proprietor of an estate, or all the joint proprietors of an estate, are disqualified as provided in the last preceding section, the Court shall have power to take charge of all the property of every such proprietor or joint proprietor within its jurisdiction, and of the person of any such proprietor or joint proprietor who is resident within its jurisdiction; and also of the person and property of any minor member of the family of any such proprietor or joint proprietor who has an immediate or reversionary interest in the property of such proprietor or joint proprietor.

Jurisdiction of Court over disqualified proprietors.

8. Whenever the circumstances of any ward become such that the Court could not take charge of him or of his property if he were not under its charge already, the Court shall be bound to release from its charge such person and his property.

Court when bound to give up charge.

9. The Court may in its discretion, in any case in which it is empowered by this Act to take charge of the person and property of any disqualified proprietor,—

Discretion of Court as to taking charge.

- take charge of such property without taking charge of such person;
- refrain from taking charge of any such person or property;
- at any time withdraw from such charge if taken;
- at any time resume such charge, after having withdrawn from it.

10. Whenever a Civil Court thinks it necessary, under section 9 of Act XL of 1858¹, to make provision for the charge of the person and property of a minor,

whenever a Civil Court recalls any certificate under section 21 of the said Act, or whenever a person has been adjudged, under Act XXXV of 1858², to be of unsound mind and incapable of managing his affairs,

if the property of such minor or disqualified proprietor consists, in whole or in part, of land or any interest in land, the Civil Court may apply to the Court of Wards to take charge of the person and property of such minor or disqualified proprietor; and it shall be at the discretion of the Court of Wards to take charge of such person or property or to refuse to do so.

Nothing contained in sections 12 to 19 (both inclusive) of Act XXXV of 1858² shall be held to apply to persons or properties under the charge of the Court of Wards.

11. Whenever one or more of the joint proprietors of whose properties the Court of Wards has taken charge ceases to be subject to the jurisdiction of the Court of Wards, and the persons and properties of the remaining joint proprietors thereby cease to be subject to the jurisdiction of the Court of Wards, notwithstanding the otherwise continued disqualification of such remaining joint proprietors the Civil Court which would have jurisdiction under Act XL of 1858¹ may, on the application of the Court of Wards, direct the Court of Wards to retain or resume charge of the persons and properties of the still disqualified proprietors during the continuance of their disqualification, or, subject to the provisions of section 12, for so long as such Civil Court may order.

Procedure when estate is no longer under Court because some proprietors have ceased to be disqualified.

And, in case any of the proprietors who have ceased to be subject to the jurisdiction of the Court of Wards so consent, the Court of Wards may retain or resume the charge of the properties of such proprietors, or any part thereof, so long as the property of any of the disqualified proprietors remains in charge of the Court of Wards.

12. The Court of Wards may at any time withdraw from the charge of any person and property taken under section 10 or under section 11, and from the charge of any person or property which before the commencement of this Act was placed under the charge of the Collector by a Civil Court under section 12, section 14 or section 21 of Act XL of 1858¹, or under section 11 of Act XXXV of 1858²:

Withdrawal from charge by Court.

Provided that it shall give notice of its intention to withdraw to the Civil Court concerned, and that such notice shall be given not less than two months before the Court of Wards shall so withdraw.

13. Whenever, on the death of any ward, the succession to his property or any part thereof is in dispute, the Court may either direct that such property or part thereof be made over to any person claiming such property, or may retain

Procedure when succession to property disputed.

¹ For Act XL of 1858, see Vol. I, p. 332. ² For Act XXXV of 1858, see General Acts, 1834—66, 2nd Ed., p. 142.

charge of the same until the right to possession of the claimant has been determined under Bengal Act VII of 1876¹, or until the dispute has been determined by a competent Civil Court.

General power of Court.

14. Subject to the provisions of this Act, the Court—
(a) may, through its manager, do all such things requisite for the proper care and management of any property of which it may take or retain charge under this Act, or which may be placed under its charge by order of a competent Civil Court, as the proprietor of any such property, if not disqualified, might do for its care and management; and
(b) may, in respect of the person of any ward, do all such things as might be lawfully done by the legal guardian of such ward.

15. The Court may exercise all or any powers conferred on it by this Act through the Commissioners of the divisions and the Collectors of the districts on which any part of the property of the disqualified proprietor may be situated; or through any other person whom it may appoint for such purpose.
The Court may, with the sanction of the Lieutenant-Governor, from time to time delegate any of its powers to such Commissioners or Collectors or other person as aforesaid, and may at any time with the like sanction revoke such delegation.

Delegation of powers.

16². The Court may from time to time order such establishments to be entertained and expenses to be incurred as it shall consider requisite for the care and management of the persons and properties under its charge, for the audit of accounts, and generally for all the purposes of this Act, and may order that such expenses, inclusive of all salaries, gratuities and payments on account of the leave-allowances of such establishments, be charged against any one or more properties for the purposes of which such establishments are, or have been, entertained or such expenses have been incurred.

Establishments and expenses.

17³. The Court may, in respect of such of the establishments and expenses referred to in the last preceding section as are in the judgment of the Court of a general nature, direct that they shall be met by a general contribution to be levied in such manner and in such proportion as they shall be deemed always to have been, lawful to charge against any fund to which such general contribution may from time to time be, or have been, credited, any salaries, gratuities, or leave-allowances or pensions of officers and servants which the Lieutenant-Governor may order, or has already ordered, to be so charged.

General contribution for general purposes.

Charges for pensions and leave-allowances.

18. The Court may sanction the giving of leases or farms of the whole or part of any property under its charge, and may direct the mortgage or sale of any part of such property, and may direct the doing of all such other acts as it may judge to be most for the benefit of the property and the advantage of the ward.

Power to manage property.

19. If the Court thinks it expedient to direct the sale or mortgage of any part of an estate of which the ward is the sole proprietor, it may order the Collector to partition off such part into a separate estate, and the demand of land-revenue and of the cesses for which the original estate was liable shall be assessed upon and divided between the two separate estates so formed, respectively, in such manner as the Court, with the sanction of the Lieutenant-Governor, may direct.

When Court may order property to be formed into separate estate.

¹ See *supra*, p. 292.

² This section has been substituted for the original s. 16 by Ben. Act III of 1881, s. 3 (see *infra*, p. 604), which applies to Bengal and the District of Sylhet. The original section which applies now in the Districts of Cachar and Goalpara is as follows:—

"16. The Court may from time to time order such establishments to be entertained and expenses, shall consider requisite for the care and management of the persons and properties under its charge, for superintendence, of this Act, and generally for all purposes for the audit of accounts, and such expenses be charged against any one or more of the establishments and expenses referred to in the last preceding section as are of a general nature, direct that they shall be met by a general contribution from the properties benefited thereby, to be levied in such manner and in such proportion as the Court may from time to time direct."

and may order that the cost of any such establishment and any such expenses be charged against any one or more properties for the purposes of which they are entertained or incurred."

³ This section has been substituted for the original s. 17 by Ben. Act III of 1881, s. 3 (see *infra*, p. 604), which applies to Bengal and the District of Sylhet. The original section (which applies now in the Districts of Cachar and Goalpara) is as follows:—

"17. The Court may, in respect of such of the establishments and expenses referred to in the last preceding section as are of a general nature, direct that they shall be met by a general contribution from the properties benefited thereby, to be levied in such manner and in such proportion as the Court may from time to time direct."

General contribution for general purposes.

20. The Court may appoint one or more managers for the property of any ward, and one or more guardians for the care of the person of any ward under the charge of the Court, and may control and remove any manager or guardian so appointed.

Appointment of managers and guardians.

On any disqualified proprietor becoming a ward, the Court may, at its discretion, confirm or refuse to recognize any appointment of a person to be guardian of such disqualified proprietor which may have been made by a will.

21. The Court may make such orders as to it may seem fit in respect of the custody, education and residence of a minor ward, and such minor members of the ward's family as are under its charge, and in respect of the custody and residence of any ward, not being a minor, whose person is under the charge of the Court.

Custody, education and residence of wards.

22.⁴ The Court shall allow, for the support of each ward and of his family, such monthly sum as it thinks fit (if any) with regard to the rank and circumstances of the parties.

Allowance for ward and his family.

PART III.

PROTECTION FROM SALE OF CERTAIN ESTATES.

23¹. *Clause 1*—Except as hereinafter provided by section 23A, every estate, and, subject to the provisions of section 14 of Act XI of 1859², every share or part of an estate for which a separate account has been opened under section 10 or section 11 of the said Act, or under section 70 of Bengal Act VII of 1876³, shall be exempt from sale for arrears of Government revenue which have accrued whilst such estate, share or part has been under the charge of the Court:

Provided that all such arrears of revenue shall be the first charge upon the sale-proceeds of any estate, share or part which may be sold for any other cause than for such arrears of revenue.

Recovery of arrears of revenue due at time when estate ceases to be under charge of Court.

Clause 2.—If at the time when such estate, share or part ceases to be under the charge of the Court of Wards, an arrear of revenue is due on account thereof, the Collector may attach such estate, share or part and collect the rent, cesses and other demands due, and all arrears thereof, managing such estate, share or part either directly or through a manager, or by farming it for a period not exceeding five years, as he may think fit;

Provided that, when such estate, share or part has been attached under the provisions of this clause, the proceeds shall be paid to the Collector, and the Collector, after deducting the claims of Government for revenue and other public demands, together with any interest which has accrued upon such public demands other than Government revenue, and the charges of management, due up to the date of making such deduction, shall release such estate, share or part from attachment and pay any balance of the proceeds still remaining in his hands to the proprietor of such estate, and pay any balance of the proceeds still remaining in his hands to the proprietor of such estate, share or part or to his duly constituted agent, and shall furnish such proprietor or agent with an account of the receipts and expenditure extending over the time when such estate, share or part was under attachment.

23A.⁵ Notwithstanding anything in clause 5, section 8, Regulation I of 1793,⁴ or in section 23 of this Act contained, any estate, share or part of an estate on which an arrear of revenue has accrued while under the charge of the Court may at any time be sold under the provisions of the law for the time being in force for the recovery of arrears of Government revenue, if the Court has certified in writing that the interests of the ward require that such estate, share or part be so sold, and has stated in such writing the reasons upon which it has arrived at such conclusion.

Conditions under which estate may be sold for arrear of revenue accrued under Court.

¹ This section and section 23A have been substituted for the original s. 23 by Ben. Act III of 1881, s. 4, which applies to Bengal and the District of Sylhet (see *infra*, p. 605). The original section (which applies now in the Districts of Cachar and Goalpara) is as follows:—

"23. Every estate, and, subject to the provisions of section 14 of Act XI of 1859², every part or share of an estate for which a separate account has been opened under section 10 or section 11 of the said Act, or under section 70 of Bengal Act VII of 1876³, shall, whilst it is under the charge of the Court, be exempt from sale for arrears of revenue."

² Provide that all arrears of revenue shall be the first charge upon the proceeds of any such estate, part or share, sold for any other cause than for arrears of revenue while under such charge."

³ For Act XI of 1859, see Vol. I, p. 380.

⁴ Sections 23 and 23A have been substituted for the original s. 23 by Ben. Act III of 1881, s. 4—see first footnote on preceding page.

⁵ See Vol. I, p. 5.

24. No estate the sole property of a minor or of two or more minors, and descended to him or them by the regular course of inheritance, or by virtue of the will of, or some settlement made by, some deceased owner thereof, shall be sold for arrears of revenue accruing subsequently to his or their succession to the same, until such minor or one of such minors has completed his age of twenty-one years, but all arrears of revenue shall be the first charge upon the proceeds of such estate if the estate is sold for any other cause during such minority.

The Collector may, on an arrear so accruing on any such estate, attach the estate and collect the rents and all arrears of rent due, managing the estate either directly or through a manager or by farming it as he may think fit for a period not exceeding ten years, nor extending beyond the time when such minor or one of such minors completes his age of twenty-one years.

But Collector may attach estate.

25. The exemption from sale for arrears of revenue given by section 24 shall only apply to cases in which a written notice of the fact that the estate is the sole property of one or more minors, and entitled to such exemption, has been served on the Collector before the sale.

When exemption from sale for arrears of revenue applies.

26. When an estate has been farmed under the provisions of section 24, the proceeds of such farm shall be paid to the Collector, and the Collector, after deducting the amount of the claims of the Government for revenue and other public demands and the charges of management, shall either pay the proceeds to the person authorized to receive them for the proprietor, or shall dispose of them in any of the modes mentioned in section 49 or in section 50.

Application of proceeds of farmed estate.

PART IV.

ASCERTAINMENT OF DISQUALIFICATION.

27. Whenever any Collector has reason to believe that any person residing in his district or being the proprietor of an estate borne on the revenue-roll of his district, should be declared or adjudged to be a disqualified proprietor under section 6, he shall make such enquiry as he may deem necessary, and, if satisfied that such person should be so declared or adjudged, shall make a report of the same to the Court; and the Court shall, on receipt of such report, make such order consistent with this Act as may seem to it expedient.

Collector to make enquiry and report as to disqualified proprietors.

Power to enforce provisions of Act without report.

28. Nothing in section 27 shall prevent the Court or the Local Government from putting the provisions of this Act in force without any report from the Collector.

29. Whenever any Collector receives information that the sole proprietor of an estate which is borne on the revenue-roll of his district has died, or that the sole proprietor of any estate has died within his district, and such Collector has reason to believe that the heirs of such proprietor should be declared or adjudged to be disqualified under section 6, he may take such steps and make such orders for the safety and preservation of the movable property of such heirs, and of all deeds, documents or papers relating to the property of such heirs, as to him may seem fit.

Such Collector may call upon any other Collector in whose jurisdiction any such movable property, or any such deeds, documents or papers may be, to take charge of the same, and thereupon such other Collector shall have the same powers with respect to such property, deeds, documents and papers within his district as are conferred by this section on the first-mentioned Collector.

If the property is not afterwards taken under the charge of the Court, all expenses incurred by a Collector acting under this section shall be recoverable as arrears of revenue from the owner of such property or the person or persons whom the Collector shall find to be in possession of such property, and shall constitute a demand under Bengal Act VII of 1868¹ or any similar law² for the time being in force.

Recovery of expenses.

¹ See *supra*, p. 116.

² See now Ben. Act VII of 1880, *infra*, p. 515.

30. A Collector acting under the last preceding section may direct that any person who has the custody of a minor heir of any such deceased proprietor shall produce such minor before such Collector or before any other Collector on a day fixed, and the Collector before whom the minor is so produced may make such order for the temporary custody and protection of such minor as to him may seem fit.

If the minor is a female, she shall not be brought into the presence of the Collector, but the Collector may take such steps for her identification as he may think fit.

31. If a sole proprietor of an estate who does not reside within the local limits of the ordinary original civil jurisdiction of the High Court is reported by a Collector to be of unsound mind and incapable of managing his affairs, the Court may order the Collector making such report, or such other Collector as the Court may appoint, to apply, in pursuance of the provisions of Act XXXV of 1858,¹ to the Civil Court of the district within the jurisdiction of which such proprietor may reside.

Enquiry in case of lunatics.

32. If a sole proprietor of an estate who does not reside within the local limits of the ordinary original civil jurisdiction of the High Court is reported by a Collector to be incapable of managing his property on the ground of some physical defect or infirmity other than unsoundness of mind, the Court may order the Collector making such report, or such other Collector as the Court may appoint, to apply to the principal Civil Court of the district within which such person may be residing; and, upon such Collector so applying, such Civil Court shall enquire into and determine the question as to the alleged incapacity.

Civil Court to make enquiry regarding disqualification on ground of physical defect or infirmity.

33. If a sole proprietor of an estate who is resident within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal, or resident beyond the territories administered by the Lieutenant-Governor of Bengal, shall be reported by a Collector to be incapable of managing his property by reason of some physical defect or infirmity other than unsoundness of mind, the Court may order the Collector making such report, or such other Collector as the Court may appoint, to apply to the principal Civil Court of the 24-Pergunnahs, or to such other Civil Court as the Lieutenant-Governor, on application made to him by the Collector in that behalf, may determine.

Such Civil Court shall thereupon enquire into and determine the question as to the alleged incapacity.

34. When any enquiry is instituted by a Civil Court under section 32 or section 33, such Court shall, for the purposes of making such enquiry, have the powers conferred, and proceed in the manner prescribed, by Act XXXV of 1858² with respect to the enquiries directed to be made by the said Act.

Powers of Civil Court when enquiry is instituted under section 32 or 33.

The Civil Court shall transmit to the Court of Wards a copy of the order made on each such enquiry, and the Court of Wards shall thereupon, in case the proprietor has been found by the Civil Court to be incapable as aforesaid, make such order, consistent with this Act, as it shall think fit.

The Civil Court shall have, with reference to proprietors who have been adjudged to be incapable as aforesaid, the same powers as are conferred on a Civil Court by section 21 of Act XXXV of 1858³, with reference to persons adjudged to be of unsound mind and incapable of managing their affairs.

PART V.

PROCEDURE AFTER ASCERTAINMENT OF DISQUALIFICATION.

35. Whenever the Court has determined to take the person or property of a disqualified proprietor under its charge, whether in accordance with an order of the Civil Court or otherwise, the Court shall make an order declaring the fact and directing that possession be taken of such person and property or of such property on behalf of the Court, and the Court shall be held to be in charge of such property from the time when possession shall have been so taken.

Order declaring estate under charge of Court.

¹ See General Acts, 1834-66, 2nd Ed., p. 142. ² For Act XXXV of 1858, see General Acts, 1834-66, 2nd Ed., p. 142. ³ For Act XXXV of 1858, see General Acts 1834-66, 2nd Ed., p. 142.

36. As soon as conveniently may be after an order is made under the provisions of section 35, the Collector of every district within which any part of the ward's property may be situated, or some person authorized in writing by him in that behalf, shall take possession of all accounts, papers and moveable property of the ward, and place under proper custody such portion thereof as he may think necessary.

Any such Collector, or some person authorized as aforesaid, may, in case he has reason to believe that any such account, paper or property is in any room, box or receptacle within any house in the actual possession of the ward, break open the same for the purpose of searching for such account, paper or property.

37. Any such Collector may also order all persons in the employ of the ward, or all persons who were in the employ of the deceased proprietor from whom the ward has derived his property, to attend before him,

Additional powers of Collector.

and may order any person to deliver up any accounts, papers or moveable property belonging to the ward, or any accounts or papers relating to the ward's property, which the Collector has reason to believe are in such person's possession,

and may order all holders of tenures and under-tenures on such property to produce their titles to such tenures and under-tenures.

PART VI.

MANAGEMENT AND GUARDIANSHIP.

38. If no manager of the property of a ward is appointed by the Court, the Collector of the district in which the greater part of such property is situated, or any other Collector whom the Court may appoint in that behalf, shall be

Collector when to be deemed manager.

competent to do, under the orders of the Court, anything that might be lawfully done by the manager of such property.

39. Every manager appointed by the Court shall have power to manage all property which may be committed to his charge, to collect the rents of the land entrusted to him, as well as all other money due to the ward, and to grant receipts therefor;

Powers of manager.

and may, under the orders of the Court, grant or renew such leases and farms as may be necessary for the good management of the property.

40. Every manager shall manage the property committed to him diligently and faithfully for the benefit of the proprietor, and shall in every respect act to the best of his judgment for the ward's interest as if the property were his own.

General duty of manager.

41. Every manager appointed by the Court shall—

Specific duties of manager.

(a) have the care of so much of the property of the ward as the Court may direct;

(b) give such security (if any) as the Court thinks fit to the Collector duly to account for all such property, and for what he shall receive in respect of such property;

(c) continue liable to account to the Court, after he has ceased to be manager, for his receipts and disbursements during the period of his management;

(d) pass his accounts at such periods and in such form as the Court may direct;

(e) pay the balance due from him thereon;

(f) apply for the sanction of the Court to any act which may involve the property in expense not previously sanctioned by such Court;

(g) sign all papers, deeds, documents and writings which may be executed by him by virtue of his office;

(h) be entitled to such allowance, to be paid out of the property, as the Court may think fit for his care and pains in the execution of his duties;

(i) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

42. A guardian appointed to the care of a ward shall be charged with the custody of the ward, and must look to his maintenance, health, and, if he be a minor, to his education.

General duty of guardian.

43. Every guardian appointed by the Court shall—

Specific duties of guardian.

(a) give such security (if any) as the Court thinks fit to the Collector for the due performance of his duty;

(b) pass his accounts at such periods and in such form as the Court may direct;

(c) pay the balance due from him thereon;

(d) continue liable to account to the Court, after he has ceased to be guardian, for his receipts and disbursements during the period of his guardianship;

(e) apply for the sanction of the Court to any act which may involve expense not previously sanctioned by the Court;

(f) be entitled to such allowance to be paid out of the property of the ward as the Court may think fit for his care and pains in the execution of his duties.

44. No person who would be the next legal heir of a ward, or would otherwise be immediately interested in outliving a ward, shall be appointed to be his guardian; but nothing in this section shall apply to the mother of a ward, or to a testamentary guardian.

45. If the ward is a female, a female of the same religion shall, except in the case of a testamentary guardian, be appointed guardian, preference being given to female relatives if any such be eligible.

Guardian of female ward.

But no guardian shall ordinarily be appointed or continued for a female ward if she has an adult husband.

46. Every sum due to the Court from a manager or guardian, or from the sureties of a manager or guardian, or from any officer or servant employed under the Court or from the sureties of any such officer or servant, shall be recoverable as a demand under Bengal Act VII of 1868¹, or any similar law² for the time being in force.

Sums due recoverable as demands.

47. The Court may order any past or present manager or guardian, or past or present officer subordinate to a manager or guardian, to deliver up his accounts or any property which may be in his possession within such time as may be fixed by the Court.

48³. All moneys received by the manager shall be applied to the purposes hereinafter mentioned in accordance with such instructions as the Court may from time to time give in that behalf. Unless the Board of Revenue shall specially otherwise direct, priority shall be given to the purposes included under Class I over those included in Class II, and priority shall be given to the purposes included in Class II over those included in Class III.

Application of moneys received by manager.

Class I.

The payment of all charges necessary for the maintenance, education and religious observances of the ward and his family, for the management and supervision of the property of the ward, and the discharge of the instalments of Government revenue and of all cesses and other public demands from time to time due in respect of such property or any part of such property.

Class II.

The payment of all rents, cesses and other demands due to any superior landlords in respect of any land held on behalf of the ward, the liquidation of debts payable by the ward, the payment of all expenses which may be necessary to protect the interests of the ward in the Civil Courts or otherwise, the maintenance in an efficient condition of the estates, buildings and other immoveable property belonging to the ward, and the payment of such religious, charitable and other allowances as were paid out of the proceeds of the property before it came under the charge of the Court, and such allowances and donations befitting the position of the ward's family as the Court may authorize to be paid.

¹ See *supra*, p. 116.
² See now Ben. Act VII of 1880, *infra*, p. 515.
³ This section has been substituted for the original s. 48 by Ben. Act III of 1881, s. 5 (see *infra*, 605), which applies to Bengal and the District of Sylhet. The original section (which applies now in the Districts of Cachar and Goalpara) is as follows:—

“48. All moneys received by the manager shall, in the first instance, be applied as the Court may direct according to circumstances—
in payment of the allowance fixed for the support and education of the ward and his family, and of all charges of management and supervision;
Application of moneys received by manager.
in or towards the discharge of the instalments of Government revenue and of all cesses and other public demands from time to time due in respect of such property.”

53A.¹ Any farmer holding or having held lands under the Court who, upon notice served upon him to that effect at any time during the currency of the lease or within six months after the expiry of the lease under which such lands were held or after he has relinquished such lands, omits or refuses to furnish accounts or produce documents or papers required under such notice, and shall not show sufficient cause for such omission or refusal, shall be liable to such fine as the Collector may think fit to impose, not exceeding one hundred rupees, for such omission, and the Collector may impose such further daily fine as he may think proper, not exceeding twenty rupees for each day during which such farmer shall omit to furnish the accounts, documents or papers required after a date to be fixed by the Collector in a notice warning the farmer that such further daily fine will be imposed.

Such notice shall be served by tendering to the person to whom it may be directed a copy thereof, attested by the Collector, or by delivering such copy at the usual place of abode of such person or to some adult male member of his family; or, in case it cannot be so served, by posting some copy upon such conspicuous part of the usual or last-known place of abode of such person, and, in case such notice cannot be served in any of the ways hereinbefore mentioned, it shall be served in such a way as the Collector issuing the notice may direct, and the date fixed by such notice shall not be less than fifteen days after service thereof.

The Collector may proceed from time to time to levy any amount which has become due in respect of any fine imposed under this section, notwithstanding that an appeal against the order imposing such fine may be pending:

Provided that, whenever the amount levied under such order shall have exceeded five hundred rupees, the Collector shall report the case specially to the Commissioner of the division, and no further levy in respect of such fine shall be made otherwise than by the authority of the said Commissioner.

59. Any person who disobeys any lawful order of the Court shall be liable, on conviction before a Magistrate, to a fine not exceeding five hundred rupees, and, if he is a manager or guardian appointed by the Court, to a fine not exceeding one thousand rupees.

For disobeying order of Court.

PART IX.

MISCELLANEOUS.

60. No ward shall be competent to create, without the sanction of the Court, any charge upon, or interest in, his property or any part thereof.

Disabilities of wards.

61. No adoption by any ward, and no written or verbal permission to adopt given by any ward, shall be valid without the consent of the Lieutenant-Governor, obtained either previously or subsequently to such adoption, or to the giving of such permission, on application made to him through the Court.

Adoption by ward invalid without consent of Lieutenant-Governor.

62. Nothing contained in section 60 or in section 61 shall apply to a proprietor who has consented to leave his property under the charge of the Court, as provided in the second clause of section 11.

Exception as to persons who consent to remain wards.

63.² Any amount of interest which has accrued due on arrears of rent or other demand recoverable as rent payable to the manager of an estate which is in charge of the Court may be recovered in any manner and by any process

Recovery of interest on arrears of rent.

¹ S. 58A has been inserted by Ben. Act III of 1881, s. 9, which applies to Bengal and the District of Sylhet—see Ben. Act III of 1881, s. 9, *infra*, p. 605.

² The original s. 63 was repealed in Bengal and in the Districts of Sylhet and Goalpara (excluding the Eastern Dvārs) by Ben. Act VII of 1880, s. 3. This new section has been substituted for it by Ben. Act III of 1881, s. 10 (see *infra*, p. 605), which applies to Bengal and the District of Sylhet. The original s. 63 (which applies now in the District of Cachar and in the Eastern Dvārs in Goalpara) is as follows:—

“63. All arrears of rent due by farmers, under-tenants and raiyats, in respect of property under the charge of the Court (whether such rents have become due before or after the Court has taken charge), shall be recoverable as arrears of revenue, and shall constitute a demand under Bengal Act VII of 1868, or any similar Act for the time being in force.”

“The last preceding clause shall not apply to arrears of rent enhanced after issue of notice under section 13 of Act X of 1859, or under section 14 of Bengal Act VIII of 1869, but of which the enhancement has not been agreed to by the person who is liable to pay the same, or has not been confirmed by a competent Court.”

See now Ben. Act VII of 1880, *infra*, p. 515. That Act has not been extended to Cachar or the Eastern Dvārs in Goalpara.

See Vol. I, p. 345.

As to repeal of Ben. Act VIII of 1869 in Bengal, see Act VIII of 1885.

according to which such arrears may be recovered under any law for the time being in force; and any Court or officer who is competent to make an order or certificate in execution of which such arrears or other demand are recoverable may direct that any costs incurred by the manager in obtaining such order or certificate, and in executing the same, shall be recovered in the same manner and by the same process as if the amount thereof had been included in the said order or certificate.

64. When any penalty is imposed by any order under section 57 or section 58, the Collector or Court passing such order shall make a formal record of the same with the reasons or grounds thereof.

Collector or Court to record reasons of penalties.

65. Whenever the Court has determined to release the property of a ward from its charge, it shall make an order that the jurisdiction of the Court over such property shall cease on a date not more than sixty and not less than fifteen days from the date of such order; and copies of such order shall be published as the Court may direct.

Procedure when Court's jurisdiction ceases.

65A.¹ Any expense incurred by the Court on account of any property under its charge may, after the release of such property, be recovered as a demand under Bengal Act VII of 1880², or any other Act at the time being in force for the recovery of public demands from any person into whose possession such property or any part thereof may have passed immediately after the release by the Court of such property:

Provided that the sum so recovered from any such person shall not be greater than the value of any such property which so passed into the possession of such person.

66. A Collector making any enquiry under this Act may exercise any power conferred by the XIV of 1882, Code of Civil Procedure³ on a Civil Court for the trial of suits.

Powers of Collector in making enquiries.

67. An appeal shall lie from every order of a Collector under this Act to the Commissioner of the division, and from every order of a Commissioner under this Act to the Court.

Appeals.

68. All orders or proceedings of the Commissioner and of the Collector under this Act shall be subject to the supervision and control of the Court, and the Court may, if it thinks fit, revise, modify or reverse any such order or proceeding whether an appeal is presented against such order or proceeding or otherwise.

Control of Court.

69. In the exercise of the powers and in the discharge of the duties conferred and imposed respectively on the Court by this Act the Court shall be guided by such orders and instructions as it may from time to time receive from the Lieutenant-Governor.

Control of Lieutenant-Governor.

70. The Court may make rules consistent with this Act—

- (a) defining the powers of Commissioners and Collectors respectively when the property of a ward is situated in two or more districts or in two or more divisions;
- (b) prescribing what reports shall be made from time to time by Collectors and Commissioners on the condition of the ward and his property;
- (c) prescribing the periods at which and the mode in which accounts shall be submitted by managers and guardians respectively, and the mode in which such accounts shall be audited;
- (d) regulating the custody of securities and title-deeds belonging to the estate or property of a ward;
- (e) regulating the procedure in appeals from orders of Collectors and Commissioners respectively under this Act;
- (f) prescribing the procedure to be observed when a property ceases to be under the charge of the Court;
- (g) and, generally, for the better fulfilment of the purposes of this Act.

The Court may from time to time alter, add to or repeal such rules.

¹ S. 65A has been inserted by Ben. Act III of 1881, s. 11 (see that section, *infra*), which applies to Bengal and the District of Sylhet.

² See *infra*, p. 515.

³ See Act XIV of 1882, s. 3, in General Acts, 1882-84, p. 22.

ACT No. IV OF 1892.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 25th March 1892.)

An Act 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:—

Construction.

1. (1) This Act shall be read with, and taken as part of, the Act aforesaid; 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 coparcenary as the property of a Hindu joint family governed by the *Mitakshara* or *Mithila* law."

Addition to section 3.

Addition to section 6.

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

"(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."

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."

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."

Amendment of section 10.

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

"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."

Substitution of new section 11.

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

"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.

Repeal of proviso in section 48.

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

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.

Insertion of new section after section 60.

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

"60A. 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.

PROCEEDINGS OF THE BOARD OF REVENUE
(LAND REVENUE).

FULL BOARD.



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

ABSTRACT.—Communicating to the Collector of the Nilgiris opinion of the Government Pleader regarding the handing over the Neliyalam estate, and enquiring whether the Government would accept suggestions from the Board in the direction of amending the Court of Wards Regulation.

READ—again Government Order, dated 10th June 1892, No. 2767.

ABSTRACT.—Requesting the Board to submit suggestions for the amendment of the Court of Wards Regulation as proposed in Board's Proceedings, dated 11th May 1892, No. 217.

READ—again Proceedings of the Board of Revenue (Land Revenue), dated 15th December 1892, No. 8209.

ABSTRACT.—Stating that the suggestions for the amendment of the Court of Wards Regulation referred to in Government Order, dated 10th June 1892, No. 2767, will be submitted as soon as more urgent work permits.

READ—again Proceedings of the Board of Revenue (Land Revenue), dated 8th August 1893, No. 4594.

ABSTRACT.—Replying to memorandum from Government enquiring when the Board's suggestions for the amendment of the Court of Wards Regulation may be expected.

RESOLUTION—dated 11th June 1894, No. 245.

The accompanying draft Bill to amend and consolidate the law relating to the Court of Wards is submitted to Government with reference to Government Order, No. 2767, dated 10th June 1892.

2. The defects in the existing Court of Wards Regulation (No. V of 1804) were recognised so far back as 1872, and in February 1875 a Bill (No. I of 1875) was introduced into the Legislative Council; but after going through Select Committee, and having been reported on by the Board in Court's Proceedings, No. 3404, dated 22nd December 1875, it was apparently struck off the list of Bills before the Legislative Council in December 1882 simply because it was an old Bill.

In May 1892 the inadequacy of the present law was again prominently brought to notice (Board's Proceedings, No. 217, dated 11th May 1892) on the occasion of the death of the minor zemindar of Neliyalam, when several claimants to the estate appeared and the Court had to consult the Government Pleader as to the course to be adopted. Government accepted the Board's offer to submit suggestions for amending the Regulation and called for a report; but for want of Secretariat power the Board was unable to deal with the question until the close of last year when the Hon'ble Mr. Grose, then a Member of the Board, undertook the task.

3. The draft Bill which he then prepared is submitted to Government as it left his hands, with such remarks and suggestions as the Board, as at present constituted, after careful consideration and discussion, has to offer.

Section 5 (d).—The Hon'ble Mr. Grose was doubtful about retaining this provision and was inclined to think it should be omitted (*vide* paragraph 2 of the first of the four explanatory memoranda which accompany the Bill). The Board is of opinion that the provision should stand pending discussion in Select Committee.

Section 6.—The majority of the Board accepts the proposal to limit the Court's jurisdiction to proprietors of estates paying revenue of Rs. 1,000 and upwards, as being calculated to relieve Collectors of an amount of troublesome work in inquiring into and reporting on the circumstances of petty estates, the management of which it is not generally desirable for the Court to undertake.

The Board's Second Member does not think that the restriction goes far enough and would confine the interference of the Court to cases in which it was demanded by considerations of public policy and the public interests. Ryotwari holdings and a considerable number of the petty zemindaris and poliems should, he thinks, be excluded from the category of estates which Government ought to take under management.

Sections 7 and 10.—The expression "has become subject to the jurisdiction of the Court" in these sections seems to require modification. Pending the Collectors' report under section 10 of the result of inquiries instituted under section 7 there would be no grounds for a declaration of disqualification, but no person is subject to the jurisdiction of the Court unless he is disqualified (section 6), that is to say, until a declaration has been made under section 5. The inconsistency would be removed by substituting the words "should be declared" for "has become." In the Bengal Act the scope of the Court's jurisdiction is defined in section 5. The definition of disqualification follows (section 6) and the ascertainment of disqualification is provided for in section 27. The arrangement and phraseology of these sections might, *mutatis mutandis*, be adopted with advantage in the draft Bill.

Section 11.—This section requires recasting. It is intended apparently that the Collectors' reports under section 10 should be submitted to Government, with the Court's recommendation, in all cases except those of females who the Court thinks may be left in charge of their property. But the whole section as it stands might be read as applying only to the case of persons disqualified under section 5 (a).

Section 14.—There is an apparent conflict between the second clause of this section and section 6. Section 14 makes it incumbent upon the Collector to assume charge of the person of the ward as well as of his estate when he has been made a ward under section 12, but section 6 expressly leaves it optional with the Court to assume control over the person of the disqualified proprietor or of his property or both.

Section 16.—A proviso is required to this section, for reading the section as it now stands with section 3 of Act IX of 1875 as amended by section 52 of Act VIII of 1890, the Court would be obliged to release a ward and his property on his attaining the age of 18.

Section 17.—It is difficult to conceive of a case which would fall under the first part of this section. At page 6 of memorandum I, the Barwah case is quoted as an instance in which the want was felt of power to retain charge of an estate after the release of the proprietor on account of the minority of other members of the family, but the proviso to the section would have precluded its application in the case cited, as the three brothers formed an undivided family.

If the interests of the remaining minors call for action after the ward and the property have been released, recourse can be had to Act VIII of 1890 and Act I of 1876. The Board would omit this section altogether as conferring upon the Court too much power of interference with the rights of registered proprietors.

Section 19.—This section wants revision: as pointed out above in reference to sections 7 and 10 only such persons as are disqualified are subject to the jurisdiction of the Court, and to enable the Court to resume charge of the person and property of an individual who had been a ward, a fresh declaration of disqualification would seem to be necessary before such person could be said to be subject to the Court's jurisdiction.

Section 20.—A proviso seems to be wanted to this section to protect the Court and its agents from suits. In the opinion of the Board, the Court of Wards cannot be sued save as the representative of some ward or wards; but the question is not free from doubt and forms as a matter of fact the first issue in the Pithapuram suit, in which the Court has been impleaded as a separate defendant. The Court should at least enjoy the immunity conferred upon Judges by section 48 of the Guardian and Wards' Act and Act XVIII of 1850.

Section 28.—In the penultimate clause of this section the Board would insert the words "Local Fund or" before "Municipal."

Section 34 might in the opinion of the Board be omitted altogether. The Court can make rules to regulate the conduct of managers and guardians and can suspend or dismiss the person who disobeys them. There does not seem to be any good reason for burdening the Act with an enumeration of rules regarding managers and guardians which cannot easily be made exhaustive and is likely therefore to be a fertile source of trouble in the future.

Section 35.—Clause (d) of this section would come more appropriately in a concise form under section 31. Clauses (b) and (c) should be omitted. Such matters could be better provided for by rules framed from time to time.

Section 36.—For reasons similar to the foregoing the last half of this section should be omitted: and for the words "District Collector" in the first part the Board would substitute "Court."

Section 46.—The whole of this section should be omitted. It does not appear in the Act of other provinces. The last clause of the first paragraph is inconsistent with the dignity of the Court and would destroy the finality which its orders now possess. Every troublesome ward or discontented relative would seek to gain his end by an appeal to Government. It is unnecessary to confer expressly the right to sue for a declaration of non-liability to the jurisdiction of the Court as is done by proviso (1) following sections 7 and 23 of Regulation V of 1804.

Proviso (3) is also superfluous as the Criminal Courts can act upon information however received.

The Court and its agents should, the Board thinks, be protected from suits of the nature contemplated in proviso (2)—*vide supra* section 20.

Section 50.—The Board shares the views already expressed in paragraph 8 of Board's Proceedings, No. 116, dated 31st January 1887, read in Government Order, No. 419, dated 2nd May 1887, and would omit this section altogether. The expression "persons beneficially interested" is vague, and to invest a somewhat indefinite class of persons with the legal power of inspecting accounts seems to the Board uncalled for and impolitic.

Section 51.—The Board considers it unnecessary to enumerate the points on which the Court may make rules, as the rules are not to have the force of law, and would omit this section.

Section 52.—After the words "section 8" in line 3, the words "clause 1" should be added, as it is not desirable to empower the Collector of one district to impose a fine on the Collector of another for neglect of a requisition under clause 2 of section 8.

4. A careful examination of the records of the past 20 years has been made and the Board accepts the draft Bill, subject to the remarks noted above, as sufficiently providing for all the deficiencies in the existing law which have come to notice during that period.

(True Copy and Extract.)

Secretary.

To the Secretary to Government, Revenue Department, with five sets of printed papers.

Ed. C. M. Baisson

REVENUE DEPARTMENT.

1894.

Board of Revenue

(Land Revenue),

MADRAS.

Current Number 1030

Printed June th.

Rev 22

Enc.
Proceedings, 11th June 1894, No. 245.

Submitting, with remarks, to Government the Hon'ble Mr. Grose's draft Bill to amend and consolidate the law relating to the Court of Wards, Madras.

Revenue (189) Department.

CURRENT No. 3111

10

From

The Govt. of India,
Rev. & Agr. Dept.

Order

Cor. No. $\frac{6}{174-20}$

Dated 24th April 1897.

Received 6th May 1897

Registered "

Enclosures

Spare copies

SUBJECT.

Enlargement and improvement of the existing law under which Provincial Court of Wards are constituted.

367
mm
6/5/97

G.O.	No	Department.	Date.
D.O.	Ct-71	/97.	

G.O.	No.	Department.	Date.

GOVERNMENT OF MADRAS
6 MAY 97

Dated Simla, the 24th April 1897.

G. C. Press, Simla.—No. 831 R. & A. D.—28.4.97.—1,002.

Circular No. ⁶
174-20

FROM

DENZIL IBBETSON, ESQ., C.S.I., C.S.,
Secretary to the Government of India,

TO

The Secretary to the Government of Madras,

Dept. of Rev. & Agri.
Land-Revenue.

Simla, the 24th April 1897.

SIR,

ero. bus
24-5-97
In May 1895 the Government of India consulted Local Governments and Administrations regarding certain suggestions for the enlargement and improvement of the existing law under which the provincial Courts of Wards are constituted. Their replies have now been carefully considered; and I am directed to communicate to you the conclusions at which the Governor-General in Council has arrived upon the several points which were raised in my former letter.

2. The reference arose out of the special consideration which the Government of India have recently devoted to the grave and difficult problems presented by the rapidly increasing indebtedness of the agricultural classes, and by the transfer of property in land from their hands to those of non-agricultural capitalists. While it appeared that, in the case of the smaller proprietors, some restriction upon their hitherto unfettered power of transferring their interests in land would probably be necessary, it was felt that in the case of the larger landowners, such stringent measures were for many reasons neither necessary nor expedient. In their case it was possible to deal separately with each individual case as it arose, at any rate when the status of the family was such as to render its preservation a matter of public importance; and the natural remedy appeared to lie in strengthening the hands of Government in dealing with such cases, by investing the Courts of Wards, in their management of isolated estates, with powers in some degree analogous with those that have so often been affirmed by the various Indian Encumbered Estates Acts as necessary for the effectual treatment of large classes of cases arising within defined areas.

3. In thus consulting Local Governments, the Government of India took it for granted that in all future Court of Wards legislation, the power, already

2

possessed in most provinces, would be taken to declare a proprietor upon his own application to be disqualified, and to assume the management of his estate; and the first and most important of the questions which they referred to Local Governments for their opinion was, whether it was advisable to go still further, and to assume the power of taking under Government management, without his consent, the estate of a spendthrift owner who was under no legal disability. They also put the question whether, in the event of such power being assumed, it should be exercised by Government of its own motion, or only at the request of the relations.

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- para 4
page 4 of
6. 645
24-9-95

4. The Governor-General in Council has given this matter his most careful consideration; and he has come to the conclusion that a power so arbitrary should not be assumed by or conferred upon any Local Government, at any rate to be exercised by it *ex mero motu*, unless it can show that the circumstances of the province justify and necessitate its possession. His Excellency is prepared to remove as far as possible every obstacle that might prevent the preservation of estates in the hands of the old families of India, and to offer to their members all possible assistance in extricating themselves from difficulties, is reluctant to assume on behalf of Government the responsibility of regulating the conduct of the owners of estates, which is what the proposed power of arbitrary interference practically amounts to; and he doubts whether an institution is worth preserving, or indeed is capable of being preserved, that needs such heroic measures for its support. In some provinces the proposal would meet with the strongest opposition. In any case, the exercise of the power would depend upon the views which the Local Government of the time might hold as to the nature of the facts which would justify summary interference, and a changing policy in the matter would breed uncertainty and apprehension in the minds of the landowners; there would always be a danger of inquisitorial proceedings; while a very few cases of the injudicious exercise of the power, or of the unsuccessful management of estates compulsorily taken over, would create a strong prejudice against the Court of Wards. On the whole, it seems doubtful whether the exercise, or even the possession of the power, might not lessen rather than enhance the power for good enjoyed by the Court of Wards, by diminishing its popularity with the people for whose benefit it is intended. Where the management of the Court is successful, its aid will be freely resorted to, and there will be room for compulsion only in the rarest instances. Where, on the other hand, its management is unsuccessful, it is clear that compulsion would be unjustifiable. On these general grounds the Government of India are opposed to the assumption of the power in question. If, however, any Local Government is of opinion that the measure would be welcomed, or even accepted without demur by the landowners as a body, and can moreover show that the cases in which compulsion and compulsion alone would preserve its estates to a family of importance, are so numerous as to justify a power which at the best is of a very arbitrary nature, the Governor-General in Council is prepared to consider its representations.

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page 4 of
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5. The considerations set forth above would, however, lose much of their force, if interference against the will of the owner were to be exercised only in those individual cases where its exercise was approved by the general opinion of the class affected. The difficulty is to define the body whose opinion should prevail, and the manner in which their opinion should be ascertained. From

3

the intervention of the heirs, or even of the more remote relations, the Government of India anticipate but little assistance. The family sentiment is so strong in India that, however much the family might desire the interference of Government, they would hardly ever ask for it save under the influence of personal enmity. On the other hand, where such enmity existed, the power of applying would furnish the heir or his unscrupulous advisers with a powerful weapon for the annoyance of the owner. In any case, if the interference of Government is really desirable on public grounds, its exercise should not be made dependent upon the wishes of the immediate relations alone. The question whether it is or is not so desirable should be judged of by a wider tribunal, whose view of the circumstances will be more dispassionate. If in any particular case matters have gone so far, and the character of the owner is such, that in the opinion of his fellows of the district or of the province as the case may be, who are the people best able to judge and whose interests are most nearly affected, compulsory intervention is desirable, then the objections to such interference would largely disappear. The conditions would then be satisfied in the individual case, which the Government of India have, in the preceding paragraph, required to be generally established in justification of a general power of compulsion. It would be difficult to make any legislative provision for the ascertainment of local opinion, which might not be so interpreted as practically to annul the discretion which it was intended to give. It has been suggested, therefore, that if any provincial law gave such a power of interference, it should be prescribed that the Local Government, before exercising it, must satisfy itself, *in such manner as may seem to it sufficient*, that local opinion is in favour of its action. Or the matter might be left to be dealt with by rule, which should receive the previous sanction of the Governor-General in Council. If in any province the Local Government is of opinion that the necessities of the case justify the assumption of a power of interference upon the lines sketched out above, its proposals will receive the most careful consideration.

6. The second in importance, if not in order, of the points noticed in the Government of India Circular of May 1895, was the suggestion that, following the precedent of certain Encumbered Estates Acts, the proprietor of an estate the management of which had been taken over notwithstanding that he was under no legal disability, should, upon the estate being restored to him free from encumbrance, be declared to be incapable of creating any charge upon it that should be valid beyond his lifetime. As then advised, the Government of India were not inclined to support the suggestion, on the ground that, however desirable in itself, it was "one that would meet with great opposition, and in favour of which no substantial body of opinion exists." The proposal was therefore not specifically referred for opinion to Local Governments. Notwithstanding this, its advisability has been strongly urged upon the Government of India by several of the more important Local Governments, supported by a large body of opinion, Revenue and Judicial, official and non-official. It is pointed out that it is a matter of common experience that all the good that long and careful official management has done in freeing an estate from encumbrance, is too often undone in a few years upon the estate being restored to its owner. To prevent this evil only two courses seem possible: either, by continuing the management, to deprive the owner of all control whatever over his own property, long after it has ceased to be necessary to do so for any other purpose than to prevent it from being again encumbered; or to restore it to his control, limited only so far as is necessary to ensure that the state of affairs that had led to the assumption of the management shall not recur, or if it does, shall abate

pointed out
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24-9-95
para 819

on his death. The Government of India believe that of these two courses, the owner himself would prefer the latter; and that at any rate native public opinion will be almost unanimous in its favour. The disability will operate only in the case of those who have shown themselves actually and in fact unfit to be trusted with full control over their own property, and will be based upon their own admission of incompetence. The Government of India think, however, that the Local Government should not attempt the invidious task of attempting to discriminate between members of a class, or to decide whether each individual shall or shall not be declared incapable. They think that in all cases where a proprietor has been declared incapable of managing his property at his own request (and, *a fortiori*, in all cases in which the action described in paragraph 3 of this letter has been taken, should such action be legalised in any province) the disability under discussion should apply.

7. The next proposal referred for consideration was, that a Ward of Court should be declared incapable as such of entering into any contract which may involve him in pecuniary liability. The opinion of those consulted is almost unanimous in favour of this proposal, which is indeed already the law in two provinces; and the Government of India are strongly in favour of its adoption.

8. The next suggestion was that creditors should be obliged to register all debts within a fixed period after the assumption of the management of an estate by a Court of Wards had been notified, any claims not so registered being extinguished on the expiry of the period allowed, unless admitted by the Court on being satisfied that there was good reason for the delay. After expiry of the period, the Court should have power to retire from the management if the estate proved to be involved beyond all hope of extrication, in which event all debts extinguished by non-registration would revive. This proposal also is almost universally accepted as necessary for efficient management and is approved by the Government of India.

9. The last general question put to Local Governments was, whether persons interested in land, other than proprietors, should be brought within the scope of the Court of Wards. This suggestion has been somewhat misunderstood. Nothing was further from the intention of the Government of India than to suggest that the Court of Wards should undertake the management of property other than land or interests in land, or of the holdings of tenants, or even of the estates of small proprietors. Any such attempt would be alike beyond the powers and outside the functions of Government. The action of the Court of Wards should be strictly limited to cases in which the preservation of a family from ruin is desirable on public grounds, interpreted in a liberal sense. But it is clear that there are, in certain provinces, persons interested in land, such as the large talukdars and leaseholders of waste-land grants in the Punjab, and some of the technical tenure-holders in Bengal, whose case would often fall within the above definition, but who lie outside the provisions of the existing law. The matter is essentially one to be dealt with by each province separately in view of its local conditions and requirements; and the Government of India content themselves with suggesting as a convenient model, wherever any enlargement of the law in this direction is considered necessary, the provisions of the Central Provinces Act, which declares that the term "landholder"—

"includes any person not hereinbefore specified who is interested in land and belongs to a class of which the Chief Commissioner, with the previous sanction of the Governor-General in Council, has declared the members to be landholders for the purposes of this Act."

10. Since the first reference was made to Local Governments, a new point has been brought to the notice of the Government of India, in respect of which it is probable that the law of most provinces is in need of amendment. It appears that the word "proprietor," which is used in most of the Court of Wards Acts to define the class of persons to whom they refer, does not include executors, administrators, or trustees, and may not include at any rate certain classes of persons who have only a life interest in an estate. It is obviously proper that the same circumstances which are accepted as justifying Government in removing an estate from the management of its owner, should also be held to justify it in removing an estate from the management of one whose interest in it falls short of full ownership; and the Government of India think that all persons with a life-interest only, or holding as executors, administrators, or trustees, should be placed on the same footing as beneficial owners so far as the jurisdiction of the Court of Wards is concerned. At the same time, provision should be made for enabling and requiring the Court of Wards, when it supersedes an executor or trustee in the management of the estate of a testator, to give effect as far as may be possible to the wishes of the late owner as expressed in his will. It might indeed be advisable to provide that in such a case the Court should take the place of the executor or trustee. The previous sanction of the Governor-General will be needed, under Section 5 of the Indian Councils Act, 1892, to legislation such as is contemplated in this paragraph, since it will affect the Probate and Administration Act which was passed by the Imperial Legislature.

11. Such are the general conclusions at which the Government of India have arrived on the subject of the enlargement and amendment of the law regarding Courts of Wards. In some provinces no such Court has as yet been created. In others the amendment of the law on the subject is already under consideration. In others, again, special points have been raised. In all these cases the Local Governments concerned will be addressed separately, in continuation of this letter. In other cases it is for each Local Government to consider how far any amendment of their present law is called for in view of the observations conveyed above. The suggestions discussed in paragraphs 8, 9 and 10 are of minor importance. But the Governor-General in Council is of opinion that where the existing law does not contain the provisions discussed in paragraphs 6 and 7, they should be added to it on the earliest convenient opportunity.

I have the honour to be,

SIR,

Your most obedient Servant,

W. M. B. B. B.

Secretary to the Government of India.

50 copies by packet post.

Revenue (1897) Department.

CURRENT No. 3742

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From

The Govt. of India,
Rev. & Agri. Dept.

Order

No. $\frac{894}{174-21}$

Dated 24th April 1897

Received 6-5-97

Registered

Enclosures

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Abstract

SUBJECT:

Amendment of the
Madras Court of Wards
Act.

mm 6/5/97

BACK PAPERS.

G.O.	No.	Department.	Date.

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G.O.	No.	Department.	Date.

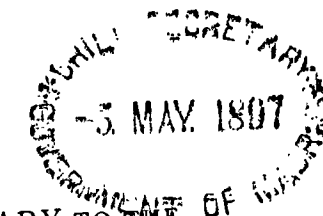
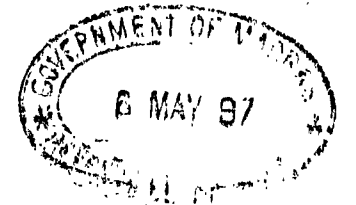
File No. 174 of 1895.

Serial No. 21.

1897.

GOVERNMENT OF INDIA.
DEPARTMENT OF REVENUE AND AGRICULTURE.

LAND-REVENUE.



To

THE CHIEF SECRETARY TO THE GOVERNMENT OF MADRAS.

No. $\frac{894}{174-21}$.

Dated Simla, the 24th April 1897.

SUBJECT.

Amendment of the Madras Court of Wards Act.

G. C. Press, Simla.—No. 2 R. & A. D.—26-4-97.—112.

No. $\frac{894}{174-21}$.

FROM

DENZIL IBBETSON, Esq., C.S.I., C.S.,
Secretary to the Government of India,

TO

THE CHIEF SECRETARY TO THE
GOVERNMENT OF MADRAS.

Dept. of Rev. & Agri.
Land Revenue.

Simla, the 24th April 1897.

SIR,

I AM directed to address you in continuation of my Circular letter No. $\frac{6}{174-20}$ of this date, and with reference to correspondence ending with your letter No. 646 of 24th September 1895 regarding the law concerning Courts of Wards.

2. The Circular in question will place the Governor in Council in possession of the views of the Government of India regarding the points discussed in your letter above referred to; and the Court of Wards Bill which is now before the Madras Government will doubtless be re-examined with reference to those views. With regard to the proposal to take power to interfere on the application of any person interested in the property, either as an encumbrancer or as a near relation of the owner, I am to invite attention to paragraph 5 of my Circular. I am also to add that a provision enabling an encumbrancer to set the Court in motion, appears to the Governor-General in Council to be beyond the proper scope of a Court of Wards Act; since the object of such legislation is to preserve in the enjoyment of their estates, families whose standing is such that their preservation is desirable on public grounds. But the object of an encumbrancer in applying for Government management would be to save the estate, not for the family, but for himself; or, at any rate, to obtain better security for the payment of his claims

3. In paragraph 6 of your letter dated 24th September 1895, you explain that it is proposed to limit the jurisdiction of the Court of Wards to estates paying to Government an annual revenue of Rs. 1,000 or upwards. The Government of India entirely agree that it is out of the question for the Court of Wards to deal with any estates which are not of such importance, either from their magnitude or from the social status of the family which owns them, as to render their pre-

C. H. 274/17

now and make provision
for the Bill

the recommendation
has been made by
the Govt. of India
by the Secy. to Govt.
9.6.45/95

ervation a matter of public importance. But they are not sure that it is wise to lay down by legislation a hard and fast limit. Such a limit tends to create an expectation that all estates falling within it will be dealt with; whereas in practice there are probably very few estates paying so little as Rs. 1,000 revenue which would be fit subjects for the interference of the Court of Wards. On the other hand, it is conceivable that there might be estates held entirely free of revenue, or which pay less than Rs. 1,000 but in which the assets have increased greatly since that revenue was fixed, in which the limit would operate to prevent interference where it might be desirable. Moreover, the fixing of the limit in terms of the revenue would seem to suggest that the object of Government intervention is the security of its own revenue, rather than (as in fact) the preservation of the family. On these grounds I am to suggest that it might be wiser to leave the matter absolutely to the discretion of the executive.

4. As regards the other provisions of the draft Bill, which it is understood has not yet been finally considered by the Madras Government, the Government of India will await the further communication promised in your letter No. 3789, dated 27th September 1894.

I have the honour to be,

SIR,

Your most obedient Servant,

Wingard Blunt

Secretary to the Government of India.

50 copies by packet post.

20-5-94
Hon. Mr. Grose. C. I. & Co.

Draft. No. 1.

1. Current No. 3742.

There are 3 separate Drafts in this file.

In the end of 1893, (G.O. 7th Nov. '93, No. 958) this Govt. forwarded to the Govt. of India a request that the Govt. of India would pass an Encumbered Estates Act suitable to this Presidency. In Feb. '94, however, the Govt. of India replied refusing to pass such an Act as that desired by this Govt. and stating that in the opinion of India relief of embarrassed zemindars ^{could} be sufficiently attained by the insertion in the Court of Wards Regulation V of 1804 of a provision under which the indebted proprietor would be enabled by a declaration that he is disqualified to manage his estate to bring himself under the protection of the Regulation.

2. On the 11th of June '94, the Board forwarded with its criticisms a draft Bill by the Hon'ble Mr. Grose to amend and consolidate the law relating to the Court of Wards, Madras. In a letter of the 27th of September '94, No. 3789, the Govt. of India was told that legislation with a view to amend the Court of Wards Regulation in force in this Presidency was under consideration. On receipt of this letter, the Govt. of India telegraphed that the Court of

20. 4318 hrs.
8.11.94

14/5/97

Wards legislation was under consideration that ~~the Govt of India~~ ^{it} was about this to address the local Govts. and ~~asking~~ ^{it asked} Govt. to await communication before introducing the Bill. In ~~Jan.~~ ^{March} 1895, the Govt of India again stated that the communication referred to above was in type and would issue immediately. It was not, however, until 10th May '95 that the communication in question issued from the Govt. of India. This communication was carefully considered by this Govt. and replied to in letter No. 646 dated 24th Sept. 1895 and it is to this communication, ^{the} ~~Current~~ ^{in the file} No. 3742, is a reply.

3. In this reply India declines

(i) to permit power to be taken to interfere on the application of an encumbrancer.

(ii) It thinks that ^{the} Govt. intervention should be left absolutely to the discretion of the Executive; and

(iii) As regards the other provisions of the draft Bill it awaits further communication promised on the 27th Sept. 1894.

4. Current No. 3741 contains the conclusions arrived at by India in regard to ~~the~~ several of the most important points connected with the Court of Wards Act. After duly considering the reports of the several local Govts. its conclusions are.

(i) that it is necessary to invest the Court of Wards with powers in some degree

*C. O. 1395
3-4-95*

*Q. O. 2222
4-6-95*

No such power is given in the Draft

i.e. has no limit like that of paying Rs 1000 of annual revenue and be improved by law

11. Current No 3741

degree analogous with those that have so often been affirmed by various Indian Encumbered Estates Acts.

(ii) It has come to the conclusion that the power of taking an estate out of the control of an owner should not be assumed by any local Govt. ~~ex aequo~~ ^{motu}. But India will be prepared to consider special cases where it may be necessary to do this under special circumstances which may be specified. It would also consider interference in cases where the local Govt. had satisfied itself in such manner as may seem to it sufficient that the local opinion was in favour of its interference.

(iii) They consider that the proprietor of an estate the management of which had been taken over at his own request notwithstanding that he was under no legal disability should upon the estate being restored to him free from encumbrance declared to be incapable of creating any charge upon it that should be valid beyond his lifetime.

(iv) They consider that a Ward of Court should be declared incapable as such of entering into contract which may involve him in a pecuniary liability.

(v) They consider that creditors should be obliged to register all debts within a fixed period after the assumption of the management of an estate by a court of Wards had been notified any

claims not so registered being extinguished on the expiry of the period allowed unless admitted by the court on being satisfied that there was good reason for the delay. *Such land claims to revive N. Court of Wards within*

(vi) They repudiate the idea that it was in any way the intention of the Govt. of India to suggest that the Court of Wards should undertake the management of property other than land or interests in land, or of the holding^a of tenants, or even the estates of small proprietors. They lay down that the action of the Court of Wards should be strictly limited to cases in which the preservation of a family from ruin is desirable on public grounds interpreted in a liberal sense.

(vii) They point out that all persons with life-interest only or holding as executors, administrators, or trustees should be placed on the same footing as beneficial owners so far as the jurisdiction of the Court of Wards is concerned: *but its power in managing*

5. With D.O. Current No. 71 the Govt. of India forwarded ³ ~~the~~ Bill which has just been introduced in the N.W.P. with the observation that the draft Bill in hand in this Presidency is based largely on the Bengal Bill "which is cumbrous and in some respects antiquated" and they observe that it is possible that useful suggestions may be obtained from the N.W.P. Bill which is the latest

from the management, as it may do if after expiry of the period it finds that the estate is involved beyond hope of extinction

But they suggest that if the law is extended it should be to persons not otherwise specified as persons whose Courts are interested in land & belong to classes specified by Govt. Jg

the estate of a holder who has been in possession
Draft: No. 2.

III. D.O. Current No. 71.

*I think they are in a-
favourable mood.*

*Jg
19/5/97*

*Draft: No. 3.
C. No. 3277.*

proposal on the subject.

The office drafts which are appended to this note proposed to refer ~~all the three current bills above~~ ~~both the communications of the Govt. of India to the Board of Revenue for re-~~ marks. Orders are requested as to whether this course is necessary or desirable.

In this current: The Pol. Dept. want to know what stage the present C. of W. bill has now reached & whether the alterations in the bill are so numerous as to make it desirable to postpone Pudukotai legislation on the subject: The alterations are likely the many of Indian views are accepted.

18/5/97

Note No remarks are
called at present.

18.
157599

Government {1897} of Madras.
REVENUE.

Recd.

Enclosures

1897.

Regd.

Spare copies

G.O., No. 367, 20th May 1897.

MAY.

Bill to consolidate and amend the law relating to the
Court of Wards.

Letters from the Government of India expressing its views regarding the enlargement and improvement of the existing law, under which provincial Courts of Wards are constituted, communicated to the Board of Revenue with the request that the draft — in the Madras Presidency may be revised and resubmitted to Government.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—the following Proceedings of the Board of Revenue (Land Revenue), dated 11th June 1894, No. 245 :—

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

ABSTRACT.—Communicating to the Collector of the Nilgiris opinion of the Government Pleader regarding the handing over the Neliyalam estate, and enquiring whether the Government would accept suggestions from the Board in the direction of amending the Court of Wards Regulation.

Read—again Government Order, dated 10th June 1892, No. 2767.

ABSTRACT.—Requesting the Board to submit suggestions for the amendment of the Court of Wards Regulation as proposed in Board's Proceedings, dated 11th May 1892, No. 217.

Read—again Proceedings of the Board of Revenue (Land Revenue), dated 15th December 1892, No. 8209.

ABSTRACT.—Stating that the suggestions for the amendment of the Court of Wards Regulation referred to in Government Order, dated 10th June 1892, No. 2767, will be submitted as soon as more urgent work permits.

Read—again Proceedings of the Board of Revenue (Land Revenue), dated 8th August 1893, No. 4594.

ABSTRACT.—Replying to memorandum from Government enquiring when the Board's suggestions for the amendment of the Court of Wards Regulation may be expected.

Resolution—dated 11th June 1894, No. 245.

The accompanying draft Bill to amend and consolidate the law relating to the Court of Wards is submitted to Government with reference to Government Order, No. 2767, dated 10th June 1892.

2. The defects in the existing Court of Wards Regulation (No. V of 1804) were recognised so far back as 1872, and in February 1875 a Bill (No. I of 1875) was introduced into the Legislative Council; but after going through Select Committee, and having been reported on by the Board in Court's Proceedings, No. 3404, dated 22nd December 1875, it was apparently struck off the list of Bills before the Legislative Council in December 1882 simply because it was an old Bill.

In May 1892 the inadequacy of the present law was again prominently brought to notice (Board's Proceedings, No. 217, dated 11th May 1892) on the occasion of the death of the minor zemindar of Neliyalam, when several claimants to the estate appeared and the Court had to consult the Government Pleader as to the course to be adopted. Government accepted the Board's offer to submit suggestions for amending the Regulation and called for a report; but for want of Secretariat power the Board was unable to deal with the question until the close of last year when the Hon'ble Mr. Grose, then a member of the Board, undertook the task.

3. The draft Bill which he then prepared is submitted to Government as it left his hands, with such remarks and suggestions as the Board, as at present constituted, after careful consideration and discussion, has to offer.

Section 5 (d).—The Hon'ble Mr. Grose was doubtful about retaining this provision and was inclined to think it should be omitted (*vide* paragraph 2 of the first of the four explanatory memoranda which accompany the Bill). The Board is of opinion that the provision should stand pending discussion in Select Committee.

Section 6.—The majority of the Board accepts the proposal to limit the Court's jurisdiction to proprietors of estates paying revenue of Rs. 1,000 and upwards, as being calculated to relieve Collectors of an amount of troublesome work in inquiring into and reporting on the circumstances of petty estates, the management of which it is not generally desirable for the Court to undertake.

The Board's Second Member does not think that the restriction goes far enough and would confine the interference of the Court to cases in which it was demanded by considerations of public policy and the public interests. Ryotwari holdings and a considerable number of the petty zemindaris and poliems should, he thinks, be excluded from the category of estates which Government ought to take under management.

Sections 7 and 10.—The expression "has become subject to the jurisdiction of the Court" in these sections seems to require modification. Pending the Collectors' report under section 10 of the result of inquiries instituted under section 7 there would be no grounds for a declaration of disqualification, but no person is subject to the jurisdiction of the Court unless he is disqualified (section 6), that is to say, until a declaration has been made under section 5. The inconsistency would be removed by substituting the words "should be declared" for "has become." In the Bengal Act the scope of the Court's jurisdiction is defined in section 5. The definition of disqualification follows (section 6) and the ascertainment of disqualification is provided for in section 27. The arrangement and phraseology of these sections might, *mutatis mutandis*, be adopted with advantage in the draft Bill.

Section 11.—This section requires recasting. It is intended apparently that the Collectors' reports under section 10 should be submitted to Government, with the Court's recommendation, in all cases except those of females who the Court thinks may be left in charge of their property. But the whole section as it stands might be read as applying only to the case of persons disqualified under section 5 (a).

Section 14.—There is an apparent conflict between the second clause of this section and section 6. Section 14 makes it incumbent upon the Collector to assume charge of the person of the ward as well as of his estate when he has been made a ward under section 12, but section 6 expressly leaves it optional with the Court to assume control over the person of the disqualified proprietor or of his property or both.

Section 16.—A proviso is required to this section, for reading the section as it now stands with section 3 of Act IX of 1875 as amended by section 52 of Act VIII of 1890, the Court would be obliged to release a ward and his property on his attaining the age of 18.

Section 17.—It is difficult to conceive of a case which would fall under the first part of this section. At page 6 of memorandum I, the Barwah case is quoted as an instance in which the want was felt of power to retain charge of an estate after the release of the proprietor on account of the minority of other members of the family, but the proviso to the section would have precluded its application in the case cited, as the three brothers formed an undivided family.

If the interests of the remaining minors call for action after the ward and the property have been released, recourse can be had to Act VIII of 1890 and Act I of

The Board would omit this section altogether as conferring upon the Court too much power of interference with the rights of registered proprietors.

Section 19.—This section wants revision: as pointed out above in reference to sections 7 and 10 only such persons as are disqualified are subject to the jurisdiction of the Court, and to enable the Court to resume charge of the person and property of an individual who had been a ward, a fresh declaration of disqualification would seem to be necessary before such person could be said to be subject to the Court's jurisdiction.

Section 20.—A proviso seems to be wanted to this section to protect the Court and its agents from suits. In the opinion of the Board, the Court of Wards cannot be sued save as the representative of some ward or wards; but the question is not free from doubt and forms as a matter of fact the first issue in the Pithapuram suit, in which the Court has been impleaded as a separate defendant. The Court should at least enjoy the immunity conferred upon Judges by section 48 of the Guardian and Wards' Act and Act XVIII of 1850.

Section 28.—In the penultimate clause of this section the Board would insert the words "Local Fund or" before "Municipal."

Section 34 might in the opinion of the Board be omitted altogether. The Court can make rules to regulate the conduct of managers and guardians and can suspend or dismiss the person who disobeys them. There does not seem to be any good reason for burdening the Act with an enumeration of rules regarding managers and guardians which cannot easily be made exhaustive and is likely therefore to be a fertile source of trouble in the future.

Section 35.—Clause (a) of this section would come more appropriately in a concise form under section 31. Clauses (b) and (c) should be omitted. Such matters could be better provided for by rules framed from time to time.

Section 36.—For reasons similar to the foregoing the last half of this section should be omitted: and for the words "District Collector" in the first part the Board would substitute "Court."

Section 46.—The whole of this section should be omitted. It does not appear in the Act of other provinces. The last clause of the first paragraph is inconsistent with the dignity of the Court and would destroy the finality which its orders now possess. Every troublesome ward or discontented relative would seek to gain his end by an appeal to Government. It is unnecessary to confer expressly the right to sue for a declaration of non-liability to the jurisdiction of the Court as is done by proviso (1) following sections 7 and 23 of Regulation V of 1804.

Proviso (3) is also superfluous as the Criminal Courts can act upon information however received.

The Court and its agents should, the Board thinks, be protected from suits of the nature contemplated in proviso (2)—*vide supra* section 20.

Section 50.—The Board shares the views already expressed in paragraph 8 of Board's Proceedings, No. 116, dated 31st January 1887, read in Government Order, No. 419, dated 2nd May 1887, and would omit this section altogether. The expression "persons beneficially interested" is vague, and to invest a somewhat indefinite class of persons with the legal power of inspecting accounts seems to the Board uncalled for and impolitic.

Section 51.—The Board considers it unnecessary to enumerate the points on which the Court may make rules, as the rules are not to have the force of law, and would omit this section.

Section 52.—After the words "section 8" in line 3, the words "clause 1" should be added, as it is not desirable to empower the Collector of one district to impose a fine on the Collector of another for neglect of a requisition under clause 2 of section 8.

4. A careful examination of the records of the past 20 years has been made and the Board accepts the draft Bill, subject to the remarks noted above, as sufficient for providing for all the deficiencies in the existing law which have come to notice during that period.

(True Copy and Extract.)

(Signed)

L. M. WYNCH,
Secretary.

To the Secretary to Government, Revenue Department,
with five sets of printed papers.

READ—again G.O., No. 591, Revenue, dated 13th August 1894.

ABSTRACT.—Letter from the Government of India requesting to be informed in what direction the amendment of the law relating to the Court of Wards is thought expedient in the matter of promoting the improvements on the estates under it by investment of surplus proceeds, communicated to the Court of Wards for report.

READ—again letter from the Secretary to the Government of Madras, Revenue Department, to the Secretary to the Government of India, Revenue and Agricultural Department, dated 27th September 1894, Mis. No. 3789.

I am directed to acknowledge receipt of your letter, dated 25th July last, No. 2106—228, communicating certain observations regarding the report on the administration of Court of Wards' estates in Madras for 1892—93.

2. In reply to paragraph 2 of your letter desiring to be informed in what direction the amendment of the law relating to the investment of surplus proceeds in Wards' estates is considered desirable, I am to forward copy of Proceedings of the Court of Wards, dated 8th instant, No. 18,

* With enclosure.

as well as of Proceedings of the Board of Revenue (Land Revenue), No. 245, * dated 11th June last, which is at present under the consideration of this Government. It will be seen from section 28 of the draft Bill appended to the Proceedings last referred to that it is considered desirable to give the Court of Wards the same powers in regard to the disposal of surplus funds as are given by section 50 of Bengal Act IX of 1879. I am to add that the remarks of His Excellency the Governor in Council on this as well as the other amendments proposed in the draft bill will be submitted in due course for the information of the Government of India.

READ—again G.O., Mis. No. 4318, Revenue, dated 8th November 1894.

ABSTRACT.—Recording telegram from the Government of India, Revenue and Agricultural Department, stating that Court of Wards Legislation is under its consideration and requesting to await communication before introducing the Madras Court of Wards' Bill into the Legislative Council.

READ—again G.O., Mis. No. 2222, Revenue, dated 4th June 1895.

ABSTRACT.—Referring to the Board of Revenue, for remarks, Circular No. 9—174, dated the 10th May 1895, from the Government of India, regarding the existing Legislation on the subject of Courts of Wards.

READ—again G.O., Mis. No. 2345, Revenue, dated 12th June 1895.

ABSTRACT.—Communicating to the Board of Revenue, with remark, letter from the Government of India, Circular No. 12—174, dated 6th June 1895, requesting that the reply to Circular No. 9—174, dated 10th May 1895, may reach them by the end of August without fail.

READ—again G.O., No. 645, Revenue, dated 24th September 1895.

ABSTRACT.—Accepting, with remarks, the views of the Board of Revenue on certain questions raised by the Government of India in connection with the proposed legislation for the preservation, from ruin, of proprietary classes in this Presidency.

READ—again letter to the Secretary to the Government of India, Revenue and Agricultural Department, No. 646, dated 24th September 1895.

ABSTRACT.—Submitting the views of this Government on the question of enlarging and amending the existing law on the subject of Court of Wards so as to afford relief to the proprietors of estates who, though otherwise competent, are unable to liquidate their encumbrances.

READ—letter from the Secretary to the Government of India, Revenue and Agricultural Department, dated 24th April 1897, Cir. No. 6—174-20.

ABSTRACT.—Communicating the conclusions of the Government of India in regard to the enlargement and improvement of the existing law under which Provincial Courts of Wards are constituted.

READ—letter from the Secretary to the Government of India, Revenue and Agricultural Department, dated 24th April 1897, No. 894—174-21.

ABSTRACT.—Communicating the remarks of the Government of India in respect of the amendment of the Madras Court of Wards Act.

ORDER—No. 367, Revenue, dated 20th May 1897.

Miscellaneous.

The last two papers read above will be communicated to the Board of Revenue with the request that the draft Bill to consolidate and amend the law relating to the Court of Wards in this Presidency submitted with its Proceedings, No. 245, dated 11th June 1894, may be revised and resubmitted to Government at an early date with reference to the remarks now made by the Government of India.

(True Extract.)

(Signed) G. STOKES,
Ag. Secretary to Government.

To the Board of Revenue (Land Revenue).

Ed. Shaik Karim.

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