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27-8-1

18-2-22

evenue (189) Department.

PRESS SERIES.

G.O., No. 871

Dated 27th December 1899

[Despatch Abstract.]

Approving the rules framed under section 35 of the C. w. Regn as amended by Act IV of 1899 & ordering their publication in the Fort St. George Gazette.

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BACK PAPERS.

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

FURTHER PAPERS.

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

000—18-10-98.

L

Revenue (1899) Department.

CURRENT No. 7268.

From The Govt Solicitor
Madras.

Order

No. 606.

Dated 10th
Received 10th
Registered 11th
} Nov: 1899.

Enclosures

Spare copies.

SUBJECT.

Furnishing opinio
in regard to the draft rule
framed by the Board und
section 35 of the amend
Court of Wards Regulati

2

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

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REVENUE DEPARTMENT.

1899.

Board of Revenue

(Land Revenue),

MADRAS.

Printed September th.

Proceedings, Ref. D. No. 105, Press, 12th September 1899.

SEPTEMBER.

Submitting, with remarks, for the approval of Government, a set of draft rules ~~formed~~ framed by the Board of Revenue under section 35 of the Court of Ward's Regulation as amended by Madras Act IV of 1899.

PROCEEDINGS OF THE BOARD OF REVENUE

(Land Revenue).

The Hon'ble Mr. J. Sturrock.
The Hon'ble Mr. J. Thomson.
The Hon'ble Mr. F. A. Nicholson.

Read—the following :—

Official Memorandum., No. 223 (Confdl. No. 103).

With reference to Government Order, Mis. No. 2305, Revenue, dated 27th June 1899, the Board of Revenue is requested to consider and advise the Government, at as early a date as practicable, on the following matters :—

If and when the Government makes the declaration under section 2 of Madras Regulation V of 1804, as amended by Madras Act IV of 1899, in respect of the Kálahasti and Karvetnagar zamindaris—

(i) What Collectors should be appointed with reference to the second clause of section 28 to discharge the duties imposed upon a Collector by the Regulation ?

(ii) What arrangements should be made with reference to section 36 ? (It may be assumed that a notification under section 35 will issue).

(iii) Whether any and, if so, what rules should be framed under section 35, clause 2 ?

(By Order.)

Ootacamund,
12th July 1899.

(Signed) N. E. MARJORIBANKS,
Ag. Under Secy. to Government.

To the Board of Revenue (Land Revenue).

Reference on the above, dated 16th July 1899, D. No. 66 (Confdl. No. 16).

Forwarded to the Collectors of North Arcot, Nellore and Chingleput for very early remarks which should be submitted so as to reach the Board by the 30th instant at latest.

(Signed) LIONEL DAVIDSON,
Acting Secretary.

To the Collector of North Arcot,
" " of Nellore,
" " of Chingleput,
} with copy of Official Memorandum.

Read—letter from C. M. MULLALY, Esq., Collector of Nellore, dated 21st July 1899, No. 1436-R–Ver.

Read—letter from D. W. G. COWIE, Esq., M.A., Acting Collector of Chingleput, dated 26th July 1899, No. A (Confdl.).

Read—letter from R. H. CAMPBELL, Esq., I.C.S., Acting Collector and District Magistrate, North Arcot, dated Chittoor, 29th July 1899, Dis. No. 462-R–Ver.

Reference on the above, D. No. 105, Press, dated 12th September 1899.

With reference to clause (iii) of Government Memorandum No. 223, dated 12th July 1899, the Board of Revenue submits, for the approval of Government, a draft set of rules framed under section 35 of Madras Regulation V of 1804 as amended by Madras Act IV of 1899.

2. In drawing up these rules, the Board has had the advantage of the assistance and advice of the Hon'ble V. Bhashyam Aiyangar to whom it is greatly indebted for the time and trouble he has devoted to the somewhat complicated questions involved.

3. The preliminary section merely contains definitions and calls for no remarks. Parts I and III have been modelled on similar rules issued under section 320 of the Civil Procedure Code in other provinces, and present no difficulty.

4. The same cannot be said of the rules contained in Part II ; and a brief explanation of the manner in which they have been drawn up will accordingly be given. The applicability of each of the sections of the Civil Procedure Code as specified in section 37 of the Regulation was at first carefully considered and rules were then drawn up for the purpose of modifying all those sections which could not be made applicable without alteration. In other instances the rules are designedly silent, *e.g.*, section 325 of the Civil Procedure Code applies in its entirety to the case of sales by the Collector. The ordinary case will, no doubt, be that of an estate, the claims against which approximate to the total value of the assets, and, as a rule, a general enquiry such as that contemplated by section 322-A of the Civil Procedure Code will probably be necessary. Part II of the rules consequently deals first with this, the most important case, provision for the cases in which the number and amount of decrees transmitted to the Collector are comparatively trifling, being made in Rule 15 which is modelled upon the procedure contemplated in clause (*a*) of section 321. Rules 3 and 4 are based upon section 322-A, Rules 5, 6 and 7 on section 322-B, Rule 8 on section 322-C and Rule 9 on section 322-D ; Rule 10 is intended finally to put a stop to litigation in regard to claims which have been fully enquired into under the provisions of the preceding rules. Rule 11 is based on section 323, sub-section (3) being designed to secure to the Court of Wards all the powers, which it exercises in the case of an ordinary estate, in those instances where it is managing property as an agent of the Collector to whom the execution of decrees has been transferred. Rule 12 is intended to secure to a creditor the first claim on any specific property which has been pledged to him as security. Rule 13 is based on section 324 and Rule 14 on section 324-A. Rule 16 contains the most important deviation from the provisions of the Civil Procedure Code which empower the Collector to whom a decree is transferred for execution to order the sale of immoveable property if he so thinks fit. One underlying principle of these rules is that no sale shall take place unless it is either unavoidable or clearly in the interests of *both* debtor and creditor. Rules 13 and 16, therefore, prevent the Collector who is the representative of the creditors from proceeding to this extremity until after the period of 20 years has elapsed. The interests of the debtor and his estate are amply secured by this provision, but it is easy to conceive cases in which it might be advantageous to sell a portion of the ward's property at an earlier stage in

the management, advantageous, that is, in the interests of the debtor; and provided the transaction is also beneficial to the creditors, there appears no objection to such a sale; hence the provision that if the Court of Wards as the representative of the debtor and the Collector as the representative of the creditors agree, the property of the ward may be sold at any time. Rule 17 calls for no special remarks. Rule 19 provides generally for the delegation of powers.

5. In conclusion, the Board desires to draw special attention to the fact that, throughout the rules, care has been taken to make the Regulation Collector subordinate as heretofore to the Court of Wards and as far as possible to reserve to the latter authority all its ordinary powers in cases where it is entrusted with the management of an estate as an agent of the Collector to whom the execution of decrees has been transferred. The Collector himself has been made subordinate, not to the Court of Wards, but to the Board of Revenue, in accordance with the provisions of section 35 of the Regulation as amended.

6. Early orders are requested on this reference, as, until they are received, no permanent arrangements can be made for the management of the two estates of Kálahasti and Karvetnagar and the liquidation of the proprietors' debts.

(Signed) LIONEL DAVIDSON,
Acting Secretary.

To the Secretary to Government, Revenue Department.

Urgent

(1899) Department

From

Ernest Barclay
Government Solicitor
Madras

To

The Secretary to Government
Revenue Department
Madras

No 606.

Dated 10th November 1899
Recd

SECRETARY TO GOVERNMENT
10-NOV-1899
REVENUE DEPARTMENT

Encl: 1

Forwarded with enclosure with reference to the Order of Government Misc. No 3741 dated 27 October 1899 Revenue

Ernest Barclay
Government Solicitor

G.

Re - the draft rules framed by the Board of Revenue under Section 35 of the Court of Wards' Regulation as amended by Madras Act IV of 1899.

---:---

O P I N I O N

Section 35 of the Regulation as amended empowers Government to frame rules regulating inter alia the procedure of the Collector in executing decrees transmitted to him by Civil Courts. Further, - - Section 37 extends certain specified Sections of the Code of Civil Procedure to the execution of such decrees by the Collector which - Sections, however, are to be subject to such modifications as may - be made by the rules framed under Section 35. The draft rules sub-- mitted by the Board of Revenue are partly rules framed under Section 35, and partly reproductions of several of the said Sections of the Civil Procedure Code in simpler phraseology and with such modifications as are necessitated by the difference between the scope of the first para of Section 320 of the Civil Procedure Code and that of - the first para of Section 35 of the Regulation. From the stand-point of a draftsman, it may be inartistic to reproduce as rules Sections of the Civil Procedure Code which, subject to the provision that - they are applicable only in so far as they are not inconsistent with the Regulation as amended and the rules framed thereunder, are - - incorporated with the Regulation. It may be considered more artistic to frame the rules under Section 35 in such a manner as to leave it a matter of interpretation as to how far any of such rules are - - inconsistent with all or any of the said Sections of the Code of - Civil Procedure and to what extent such Sections are consequently - superseded or modified by the rules. While this method may be in a scientific and theoretical point of view excellent, it will be found that in its practical operation it will cause considerable embarrassment and perplexity to the Collector and other Revenue Officers who may have to administer the new Act and the rules framed thereunder in conjunction with the said Sections of the Civil Procedure Code; which Sections I may here observe are in themselves extremely complex and elaborate and by no means easy to interpret. The pla[illegible]ed by

the Board of Revenue in consultation with me was to reproduce several of the said Sections in simpler language and less complex form as - part of the rules with such modifications as were necessary to make - their working harmonious with Section 35 of the Regulation and the - policy of the new Act. Under this method, some of the rules alone and portions only of the other rules have the force of law as rules - - framed under Section 35 of the Regulation. The remainder of the rules are not really rules framed under Section 35 but have the force of - law as reproductions of the provisions contained in some of the said Sections of the Civil Procedure Code which as aforesaid have been incorporated with the Regulation as amended. To the extent to which the said Sections of the Civil Procedure Code have been modified the - modification has legal operation as a rule of procedure framed under Section 35. In this view none of the draft rules is ultra vires. For all practical purposes this method has immense advantage over the - morescientific method above referred to and will be a safer guide to the Collector and the other Revenue Officers who may have to work the new Act.

2. Rule IO to which my attention has been specially drawn would be ultra vires if it is to be viewed as a rule framed under Section 35.- The last three lines of that rule merely state the legal effect of - Section 322D of the Civil Procedure Code except in so far as they - extend the operation of the said Section 322D to undisputed claims - included in the statement prepared by the Collector under para 2 of - Section 322 (B) of the Civil Procedure Code which is reproduced by - the Board of Revenue in rule 6 of the draft rules. Disputed claims - are referred under para 3 of Section 322B by the Collector to the - Court for adjudication and the claim as adjudged is included in the - statement prepared under that Section. Such adjudication being a - judicial decision by a competent Court becomes final subject of course to an Appeal to the Appellate Court as provided in Section 322D which is reproduced as rule 9 in the draft rules. In the statement prepared by the Collector under para 3 of Section 322B, claims which are - - undisputed are also included in view to their being liquidated along with debts established by decrees of Court. There will therefore be - no occasion for any further litigation about the claimants' right to such undisputed debts nor any necessity for formal decrees being - obtained thereon. The last 3 lines of rule IO simply give expression to the legal consequence of disputed claims being adjudicated upon by the Court and undisputed claims being included in the statement prepared by the Collector and may therefore well be expunged. The - rest of the rule will be supplementary to Sections 322B and 322C of the Code of Civil Procedure and operate as a rule framed under Section 35 of the Regulation providing that such undisputed claims and claims adjudged by a Court on reference made to it shall be deemed to be - decrees transmitted to the Collector for execution. So far as undisputed claims are concerned which are dealt with and included in the Statement prepared under Section 322B of the Civil Procedure Code it may be that they cannot be regarded as decrees, much less as decrees transmitted to the Collector under Section 35 of the Regulation but under Section 322B of the Civil Procedure Code the Collector is - authorised to include them in the liquidation scheme and provide for their discharge along with decreed debts. There is therefore no - practical difficulty in including them in rule IO. But in view to - remove theoretical objections and an apparent inconsistency with the proviso to Section 32 which refers also to claims allowed by the - Regulation Collector. I have modified the first portion of Rule IO by omitting the portion relating to undisputed claims allowed by the Collector.

3. I have also made some changes in rule 14. The last 11 words of the explanation should be deleted and the two paragraphs immediately following the explanation should be numbered as rule 15 as they are substantially reproductions of the last two paras of Section 324A of the Civil Procedure Code and have really no connection with the - clause in rule 14 beginning with the word "secondly". That clause is confined only to the claims included in the statement drawn up under rules 6, 7 or 8 and the two paragraphs which immediately follow the explanation and which as suggested above are to be converted into - rule 15 relate to claims not notified under Section 30 of the Regulation or under Rule 5 and not included in the Statement drawn up - under rules 6, 7 or 8. The explanation therefore should have no - reference to such last mentioned claims which have to be postpo-

under the last two paras of Section 324A of the Civil Procedure Code reproduced in the paras immediately following the explanation, to - all the claims referred to in the said clause beginning with the - word "secondly" in rule 14. The last 11 words of the explanation - should be deleted and the two paras immediately following it converted into rule 15, the first word 'And' being dropped. The last proviso in the draft rule 14 should be transposed as a proviso to the clause in the said rule beginning with the word "Firstly" and it should be inserted before the last word 'and' in that clause. Rules now numbered as 15, 16, 17, 18 and 19 should be altered into 16, 17, 18, 19 & 20 respectively. When the Court of Wards Regulation is revised, it will be better to reproduce and insert in the Act itself the said Sections of the Civil Procedure with the necessary modifications so that the rules to be framed under Section 35 of the Regulation may not conflict but be consistent with the said Sections of the Civil Procedure Code as modified and incorporated with the new Act. In the meanwhile I - think that the draft rules as submitted by the Board of Revenue with the amendments and alterations above referred to and the addition - hereinafter to be referred to will be found for all practical purposes sufficient and fairly satisfactory. When experience derived from the working of the rules suggests further amendments and additions the - rules will have to be revised.

4. As under the draft rules the ward's property cannot be brought compulsorily to sale before the expiration of 20 years in execution - of decrees which have been transmitted to the Collector for execution, there is no necessity to frame rules at present under the 3rd para of Section 35 regulating the procedure for the conduct of such sales and the confirmation or setting aside of the same. But in view to orders framed by the Collector in execution of decrees transmitted to him for execution not being subject to Appeal or revision to or by Civil - Courts of Appellate or of revisional jurisdiction, it is desirable - with reference to the 4th paragraph of Section 35 to provide under the 3rd para thereof an Appeal to the Board of Revenue from the Collector's order, and an Appeal to the Collector himself from an order of a - gazetted Subordinate of his to whom powers may have been delegated - under rule 19 (now altered into 20) and to constitute the Board of -

Revenue as the revisional authority. Under the Code of Civil Procedur all orders passed by Civil Courts in execution proceedings in relation to the execution, discharge or satisfaction of the decree or the stay of execution thereof are appealable as decrees. In the additional rule No.21 drafted by me, I have provided that the orders passed by the - Collector or by any of his gazetted subordinates shall be appealable respectively to the Board of Revenue and the Collector and prescribed a period of 3 months and 1 month respectively for such appeals. Under Section 622 of the Code of Civil Procedure the High Court is a Court of Revision and the draft rule No.21 constitutes the Board of Revenue as the revisional authority in the place of the High Court under para 3 of Section 35. With reference to the 4th para of Section 35, the - effect of the additional rule will be to transfer also the Appellate and revisional jurisdiction from the Appellate Civil Courts and High Court to the Collector and Board of Revenue. In the preamble to the rules I have also made a slight verbal alteration with a view to draw attention to the fact that the rules have reference also to Section 37 of the Regulation. The copy of the draft rules submitted by the - Board of Revenue is herewith returned with the above alterations and additions noted therein. Additional Rule 21. From all orders passed by the Collector in execution of decrees transmitted to him under - Section 35 an Appeal shall lie to the Board of Revenue, provided such appeal be preferred within 3 months from the date of the order appeale against, and the order passed in Appeal by the Board of Revenue shall be final.

From all orders passed by a gazetted Subordinate of the - Collector to whom any of the powers and duties of the Collector had been delegated under rule 20 an appeal shall lie to the Collector - provided the same be preferred within 1 month from the date of the - order appealed against, and the order passed by the Collector on such Appeal shall be subject to revision by the Board of Revenue.

In computing the period of limitation for an Appeal from an order as aforesaid the day on which the order was passed and the time requisite for obtaining a copy of the order appealed against - shall be excluded.

Every order passed by the Collector or by any of his - -

gazetted subordinates which has not been appealed against may for good and sufficient cause and on application made by any party - deeming himself aggrieved by such order be reviewed and rescinded or varied by the Officer who passed the same or by his successor in office.

Every order passed in Appeal by the Collector and from which no application for revision has been preferred to the Board of - Revenue and every order passed by the Board of Revenue in Appeal or on revision may for good and sufficient cause and on application made by any party deeming himself aggrieved by such order be respectively reviewed and rescinded or varied by the Collector who - passed the order or his Sucessor in office or by the Board of - Revenue.

V. Bhashyam Iyengar
Offg: Advocate General.

M a d r a s)
)
8th November 1899)

(True Copy)
Ernest Bandas
Government Solicitor.

151 R dy 7th December 1899

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D/7 500—14-5-98.

Revenue Department.

No. 374

OFFICIAL MEMORANDUM.

Ref. ~~Board's Ref. D. No. 125 D. 12th September 99 & Opinion of the Govt. No. 3741 Dis. Dated October 1899~~ & opinion of the Advocate General dy 8 November 1899.

The Board of Revenue is requested to state whether it accepts the opinion of the Advocate General & the amendment proposed by him as regards the draft rules framed under Section 35 of the Court of Wards Regulation as amended by Madras Act IV of 1899.

18/11/99

Ft: St. Geo.,
20th Novr: 1899

To the Board of Revenue (C. & R.)
With copy of G.O. No 3741 Dis
dy 27 October 1899.
& the Advocate General's opinion
dy 8th November 1899.
With 1 encl to the rets

Dated 23-11-99

C. & R.
17/11/99

No. 7.

Revenue (1899) Department.

CURRENT No. 8003

From

The Board of Revenue,

Land Revenue.

Order

D. No. 143 Ref

Dated 12th December 1899

Received 13. XII

Registered 13. XII.

Enclosures one.

Spare copies

SECRETARY TO GOVERNMENT
REVENUE DEPARTMENT
13-DEC-1899

SUBJECT.

Accepting the Hon.V.Bhashyam Aiyangar's opinion and the amendments suggested by him as regards the draft rules framed under section 35 of the Court of Wards Regulation amended by Madras Act IV of 1899

Rec 13/12
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BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date

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4

Office of the Board of Revenue

(Land Revenue)

Dated 12th December 1899

The Hon.Mr.J.Thomson

Mr.W.J.H.Le Fanu

Mr.A.W.B.Higgens

Read the following :-

1. Official Memorandum from the Ag.Under Secretary to Government, Revenue Department, No.374, dated 20th November 1899.

2. Also Memorandum from the Ag.Under Secretary to Government, Revenue Department, No.151, dated 7th December 1899.

-------:0:-------

Reference thereon D.No.143, dated 12th December'99

The Board accepts the Honourable V.Bhashyam Aiyangar's opinion and the amendments suggested by him in the --- draft rules submitted under Ref.D.No.105 of the 12th September 1899.

Acting Secretary.

To

The Secretary to Government, Revenue Department,

with 1 enclosure (returned).

W.P.L. 12-12-99

R.H.

V.B
^ and with reference to
Section 37 thereof-

DRAFT RULES.

Under section 35 of Madras Regulation V of 1804 as amended by Madras Act IV of 1899, the Governor in Council is pleased to prescribe the following rules for the transmission of decrees from Civil Courts to the Collector and for regulating the procedure of the Collector in executing the same and for retransmitting decrees from the Collector to the Civil Courts :—

PRELIMINARY.

Rule 1.—For the purpose of these rules, unless there be something repugnant in the subject or context,—

(1) "Collector" shall mean the Collector specified in the notification issued under section 35 of Madras Regulation V of 1804 as amended by Madras Act IV of 1899.

(2) "Regulation" shall mean Madras Regulation V of 1804 as amended by Madras Act IV of 1899.

(3) "Regulation Collector" shall mean the Collector who is specified in the notification issued under section 28 but not specified in the notification issued under section 35 of Madras Regulation V of 1804 as amended by Madras Act IV of 1899, and includes a person appointed by name or in virtue of his office as Collector under section 36 of the said Regulation so amended.

(4) "Section" shall mean section of Madras Regulation V of 1804 as amended by Madras Act IV of 1899.

(5) "Ward" shall mean an incapacitated person with reference to whose case a notification under section 35 has been issued; and

(6) Words in the singular shall include the plural and words in the plural shall include the singular.

PART I.

OF THE TRANSMISSION OF DECREES FROM THE CIVIL COURT TO THE COLLECTOR.

Rule 2.—On the issue of a notification under section 35 every Civil Court shall transmit to the Collector of the district specified in such notification a copy of every decree which has been passed by it or the execution of which is pending therein and which falls under the category described in such notification.

Such copy shall be transmitted by post or in such other manner as may be most convenient and shall be accompanied by (1) a statement showing the extent, if any, to which the decree has been already executed and clearly setting forth what portion of the decree still remains to be satisfied; (2) a copy of the application, if any, made prior to the issue of the said notification for execution of the decree, and of any order made thereon; (3) any other papers which may be considered necessary in order to enable the Collector to ascertain exactly the nature of the decree and of the proceedings in execution thereof which have already taken place.

The Collector shall notify to the Court the receipt of all documents so transmitted to him.

PART II.

Of the execution of decrees by the Collector.

Rule 3.—On the issue of the notification under section 35, the Collector shall call upon the Regulation Collector to furnish him with full particulars of all claims notified to him under section 30. The Regulation Collector shall thereupon furnish the Collector with such particulars and shall explicitly state in regard to each such claim which has not been established by a final decree of a Court of competent jurisdiction whether it has been allowed or disallowed either in whole or in part under section 32.

Rule 4.—On receipt of such information the Collector shall give notice to all persons whose claims have been disallowed in whole or in part under section 32 that he proposes to enquire into the merits of such claims. The notice shall be in English and in the language of the district and shall be published by being posted in the cutcherry of the Collector and at such other places, if any, as he may think fit; it shall require such persons to produce the documents, if any, by which their claims are evidenced and shall allow a period of sixty days from the date of its publication for compliance therewith. Where the address of any such claimant is known to the Collector, a copy of the notice shall be sent to him by registered post.

Rule 5.—Upon the expiration of the said period of sixty days the Collector shall appoint a day and place (*a*) for hearing any

representations which the Regulation Collector, the holders of decrees transferred in pursuance of the notification issued under section 35 and other persons having pecuniary claims against the ward or his property, whether such claims have been allowed or disallowed in whole or in part under section 32 and whether the same have been notified to the Regulation Collector under section 30 or not, may desire to make, and (*b*) for holding such enquiry as he may deem necessary for informing himself as to the nature and extent of such decrees and claims and of the ward's immoveable property and may, from time to time, adjourn such hearing and enquiry. The Collector shall inform the Regulation Collector of the date and place so fixed and shall also give notice of such date and place in the manner prescribed by rule 4 to the decree holders and other persons aforesaid requiring them to make either in person or by an agent authorized in writing such representations as they may desire to make in the matter.

Rule 6.—If there be no dispute as to the fact or extent of the liability of the ward in respect of any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims or as to the liability of any immoveable property of the ward for the satisfaction of such decrees or claims, the Collector shall draw up a statement specifying the amount to be recovered for the discharge of such decrees and claims and the rate of interest payable, the order in which, subject to the provisions of section 33, they are to be satisfied, and the immoveable property available for that purpose.

Explanation.—In the case of all claims in respect of which no decree has been passed, it shall be competent to the Collector to fix the rate of interest payable in the same way as if he were a Civil Court drawing up a decree for the payment of money under section 209 of the Civil Procedure Code. Provided that any dispute as to the rate so fixed shall be referred to the Courts under rule 7.

Rule 7.—If any such dispute arises, the Collector shall refer the same, with a statement thereof and his own opinion thereon, to the Court or any one of the Courts of the highest grade from which any of the decrees has been transmitted to him in pursuance of the notification issued under section 35, and shall, pending the

reference, stay proceedings relating to the subject thereof. If the Courts from which decrees have been so transmitted are all of the same grade then the Collector shall make the said reference to any one of such Courts. The Court shall dispose of the dispute if the matter thereof be within its jurisdiction, or transmit the case to a competent Court for disposal, and the final decision shall be communicated to the Collector. The Collector shall then draw up a statement as above provided in accordance with such decision.

Rule 8.—With the previous sanction of the Board of Revenue, the Collector may, instead of himself issuing the notice and holding the enquiry required by rules 4 and 5, draw up a statement specifying the circumstances of the ward and of his immoveable property so far as they are known to the Collector or appear in the records of his office, and forward such statement to the District Court, and such Court shall thereupon issue the notices, hold the enquiry and draw up the statement required by rules 6 and 7, and transmit such statement to the Collector.

Rule 9.—The decision by the Court of any dispute arising under rule 7 or 8 shall, as between the parties thereto, have the force of, and be appealable as, a decree; and if such decision is varied on appeal, the statement drawn up under rule 7 or rule 8 shall be modified accordingly.

Rule 10.—All claims in respect of which no decree has been transferred to the Collector in pursuance of the notification issued under section 35 shall, if ~~allowed without dispute under rule 6 or~~ adjudicated upon by the Court under rule 7 or rule 8, be dealt with by the Collector, subject to the provisions of section 33, as if decrees had been passed thereon to the extent, if any, to which such claims are held established by the Court, and the same transmitted to him for execution, ~~and no further litigation shall be prosecuted in respect of such claims except so far as is allowed by rule 9.~~

Rule 11.—(1) Whenever the amount to be recovered and the property available have been determined as provided in rule 6, rule 7 or rule 8, the Collector may raise such amount or any portion thereof and interest—

(*a*) by letting in perpetuity or for a term, on payment of a premium, the whole or any part of the said property; or

(*b*) by mortgaging the whole or any part of such property; or

(*c*) by letting on farm, or managing by himself or through the Court of Wards, the whole or any part of such property for any term not exceeding twenty years from the date of the notification issued under section 35; or

(*d*) partly by one of such modes and partly by another or others of such modes.

(2) For the purpose of managing under this rule the whole or any part of such property, the Collector may exercise all the powers of its owner.

(3) In the event of such property or any part thereof being managed through the Court of Wards such management shall be conducted so far as may be in the same manner as if no notification had been issued under section 35, provided always that the functions of the Collector under the Regulation in respect of other matters than the execution of decrees shall be discharged by the Regulation Collector.

(4) In proceeding under this rule the Collector shall be subject to such rules consistent with the Regulation as may, from time to time, be made in this behalf by the Board of Revenue.

Rule 12.—In the case of decrees directing the sale of specific immoveable property or claims arising from mortgages of specific immoveable property, such property shall be the security for the said debts and the net rents and profits derived by letting, mortgaging or managing the said property shall be set aside for the liquidation thereof, according to the relative priorities of such decrees or claims. For the better determination of such rents and profits, the Collector shall, as soon as conveniently may be, after the expiry of the revenue year in which such lease or mortgage was executed or such management was undertaken and of every successive revenue year declare, subject to the approval of the Board of Revenue, the net annual rents and profits realized from such property and such declaration shall be conclusive evidence of the amount of rents and profits arising or accruing from such property;

Provided that in case such property is managed through the Court of Wards under rule 11 (1) (*c*) such declaration shall be made by the Regulation Collector and be subject to the approval of the Court of Wards.

Rule 13.—If, on the expiration of twenty years from the date of the notification issued under section 35, the amount to be recovered has not been fully paid or realized, the Collector shall notify the fact in writing to the Court of Wards stating at the same time that, if the balance necessary to make up the said amount is not paid to the Collector within six months of the date of such notice, he will proceed to sell the whole or a sufficient part of the said property; and if on the expiration of the said six months the said balance is not so paid the Collector shall sell such property or part accordingly.

Rule 14.—The Collector shall, from time to time, render to the Board of Revenue an account of all moneys which come to his hands and of all charges incurred by him in the exercise and performance of the powers and duties conferred and imposed on him under the provisions of these rules and shall hold the balance at the disposal of the said Board. Such charges shall include all debts and liabilities from time to time due to the Government in respect of the property or any part thereof, the rent, if any, from time to time due to a superior holder in respect of such property or part, the cost of managing such property, if any, and, if the Collector so directs, the expenses of witnesses summoned by him. Such balance shall be applied by the Collector under the direction of the said Board as follows:—

Firstly.—In providing for the maintenance of the ward and such members of his family, if any, as are entitled to be maintained out of the income of the property, to such amount in the case of each member as the Board thinks fit; and

Secondly.—In discharging rateably the claims included in the statement drawn up under rule 6, rule 7 or rule 8 subject to the relative priorities as therein declared and to the provisions of rule 12 and subsection (4) of section 39. Provided that it shall be competent to the Collector with the approval of the Court of Wards to disregard the said priorities, if he considers such a course to be in the interest of the claimants as a body.

Explanation.—This proviso does not authorize the Collector to make any payment contravening the provisions of section 33 or section 39 or inconsistent with

Provided that in case the Ward's property is managed through the Court of Wards under Rule 11 ~~Sub-le~~(1)(c) the Court of Wards shall determine the subsistence and maintenance due to the Ward and the members of his family, and all payments on this account shall be disbursed by the Regulation Collector, as if they were a legitimate charge on the management of such property.

rule 12 ~~or the stipulation contained in the sentence next following this *explanation*~~. And no other person possessing any pecuniary claim against the ward or his estate whose claim not having been notified to the Regulation Collector under section 30 or to the Collector under rule 5, has not been included in the statement drawn up under rule 6, rule 7 or rule 8, shall be entitled to be paid out of such property or balance until the decree-holders and claimants specified in the said statement have been satisfied.

And the residue, if any, shall be paid to the Court of Wards or such other person as the Board of Revenue directs.

~~Provided that in case the ward's property is managed through the Court of Wards under rule 11 (1) (c), the Court of Wards shall determine the subsistence and maintenance due to the ward and the members of his family, and all payments on this account shall be disbursed by the Regulation Collector as if they were a legitimate charge on the management of such property.~~

Rule ~~15~~ 16.—In lieu of holding the enquiry contemplated in rules 4 and 5 it shall be open to the Collector to postpone the execution of any decree which may have been transmitted to him in pursuance of the notification issued under section 35, if the Regulation Collector satisfies him that there is reason to believe that the amount of the decree may be raised by mortgage or lease or private sale or management of any property of the ward. In such case the Collector shall permit the postponement of execution for such period as he thinks proper to enable the Regulation Collector to raise the said amount and shall thereupon grant a certificate to the said Regulation Collector authorizing him within a period to be mentioned therein to arrange for the proposed mortgage, lease, sale or management:

Provided that no mortgage, lease or sale under this rule shall become absolute until it has been approved by the Collector and confirmed by the Court of Wards:

Provided further that all moneys payable under such mortgage, lease or sale or forming the profits of such management shall be paid into such Government treasury as the Collector may name, subject only to such deductions as the Court of Wards may consider necessary for the subsistence of the ward and the maintenance of such members of his family as are

entitled to be maintained out of the income of the property. Should the requisite amount not be raised within the period specified the Collector shall proceed as hereinbefore directed under rules 4 and 5.

Rule ~~16~~ 17.—Except as provided in rule 13 the Collector shall in no circumstances sell the whole or any portion of the immoveable property belonging to the ward. But it shall be competent to the Court of Wards at any time with the approval of the Collector to sell such property or any part thereof.

Rule ~~17~~ 18.—Nothing contained in the Indian Limitation Act or in section 230 of the Civil Procedure Code shall be applicable to the execution by the Collector of decrees transmitted to him in pursuance of the notification issued under section 35 of which the execution was not barred on the date of their transmission to the Collector.

PART III.

OF THE RETRANSMISSION OF DECREES.

Rule ~~18~~ 19.—On the complete discharge of any claim the decree relating to which has been transmitted to him in pursuance of the notification issued under section 35, the Collector shall intimate the fact to the Civil Court concerned and retransmit thereto the decree together with all papers received therefrom under rule 2. Should the complete discharge of the claim prove impracticable, notwithstanding the sale of the ward's immoveable property under rule 13, the Collector shall record proceedings setting forth all the steps that have been taken in the execution of the decree from the date of its transmission from the Civil Court to their conclusion and showing the sums that have thereby been realized and have been paid to the claimant or are held by the Collector at the disposal of the Court. A copy of such proceedings shall be transmitted to the Court together with the decree and all papers received therewith as aforesaid. The Court shall grant to the Collector a receipt for the decree and all papers so transmitted.

GENERAL RULE.

Rule ~~19~~ 20.—For the purpose of these rules the Collector may, with the previous sanction of the Board of Revenue, delegate to any of his gazetted subordinates any of the powers and duties hereby conferred and imposed upon him.

21. From all orders passed by the Collector in execution of decrees transmitted to him under section 35 an appeal shall lie to the Board of Revenue provided such appeal be preferred within 3 months from the date of the order appealed against, and the order passed in appeal by the Board of Revenue shall be final.

From all orders passed by a gazetted subordinate of the Collector to whom any of the powers and duties of the Collector had been delegated under rule 20, an appeal shall lie to the Collector provided the same be preferred within 1 month from the date of the order appealed against, and the order passed by the Collector on such appeal shall be subject to revision by the Board of Revenue.

In computing the period of limitation for an appeal from an order as aforesaid, the day on which the order was passed and the time requisite for obtaining a copy of the order appealed against shall be excluded.

Every order passed by the Collector or by any of his gazetted subordinates which has not been appealed against, may, for good and sufficient cause and on application made by any party deeming himself aggrieved by such order, be reviewed and [illegible] or va-

by the Collector who p[illegible] or his successor in office [illegible] Board of Revenue.

#21(a)

899

8003.

O/18 4,000—18-10-98.

29(b)

Revenue (1899) Department.

CURRENT No. 7268

~~Cover No 187~~

Please ascertain whether the Board accepts the Advs-Genl's opinion & amendments —

WS — 15-11-99

To the Under-Secretary. Submitted for orders. Legal Adviser

From The Govt Solicitor Madras

~~Order~~

To the Under-Secretary.

Submitted for orders.

No. 606

Dated 10th

Received 10th } Nov 1899

Registered 11th

Enclosures

Spare copies.

SUBJECT.

Furnishing opinion in regard to the draft rules framed by the Board under amended Sec 35 of the Court of Wards Regulation

GBV 13/11/99.

Ley

Please see note of 25.10.1899 & 27 Oct 1899. Mr is Sadagopan Ayangar reply —

If the principles be accepted that the draft rules may consist of substantive law & supplementary instructions commingled, it does not seem to matter very much, I submit, what rules are issued to begin with. Experience alone will show what the practical difficulties are in working the amended Regn.

May the Bd's draft as revised by the Adv Genl be accepted?

Ley 14/11/99

H.L.

I should have thought the Bombay precedent preferable; but as H.L. did not apparently accept this view, I submitted that W S's question may be answered Yes.

W 14/11

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

To

Under Secretary

Please see the Hon' Member's remarks in the previous page. The Board receipts the Advocate General's opinion and recommends (vide Rd' Refn D no. 143 of 12·12·99 - encl 8003 of 99).

Lee
14/12/99

I think the Rules as revised by the Adv. Genl & approved by the Board may be accepted -
H.S.
21-12-99.

To

Under Secretary.

Please see draft order submitted below.

But why should the rules be published in the Fort St. George Gazette? Cannot they be published in the General Clauses Act or elsewhere?
H
23/12/99

To the under Secretary.

There is nothing in the General Clauses Act I of 1891 (Mr) which requires that these rules should be published in the Fort St George Gazette. It seems however desirable that the rules should be published for the information of the general public. The rules issued under the corresponding section of the C.P. Code (Section 320 of Act XIV of 1882) by the Govts of Bombay & the N.W. Provinces were published in the official Gazettes. vide Rules flagged A & B.C.

Lee
Draft for approval
H
26/12/99

23/12/99.

Board of Revenue proceedings viewed and [illegible] or Dair

(A is in full)

To Print
Dft for Bk. and S Board
27-12-99

M.S. despatched to Bd.
S.R.
27.12.

copy sent to Press. one 5/1/00 for printing

Revenue Dept

Read again G.O. 3741 mis of 27·10·99.

" also ind. of the Govt. Solicitor no 606 of 10·11·99 (enc 7268 of 99)

" again O.M. no 3744 of 20·11·99

" also B. of Rs Refn D no 143 of 12·12·99 (enc 8003 of 99)

order (Press) No 871 of 27th Dec. 1899

The draft rules as revised & finally revised ~~by the Advocate Genl & accepted by the Board~~ are approved and will be published in the Fort St George Gazette.

(From orders)

H
23/12/99

To

The Board of Revenue (L.R.)
" Supdt. Govt Press for publication of the ~~codified~~ rules.

Dft
31/12/99.

22 XII 99
C.R.
22/12/99

Government {1899} of Madras.

REVENUE.

Recd. } 1900. *Enclosures*

Regd. } 1900. *Spare copies*

G.O., No. 871, 27th December 1899.

DECEMBER.

Court of Wards Regulation.

Approving the rules framed under section 35 of the — as amended by Madras Act IV of 1899 and ordering their publication in the *Fort St. George Gazette.*

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—again the following G.O., Mis. No. 3741, Revenue, dated 27th October 1899 :—

Read—the following Reference of the Board of Revenue (Land Revenue), D. No. 105, Press, dated 12th September 1899 :—

The Hon'ble Mr. J. Sturrock.
The Hon'ble Mr. J. Thomson.
The Hon'ble Mr. F. A. Nicholson.

Read—the following :—

Official Memorandum., No. 223 (Confdl. No. 103).

With reference to Government Order, Mis. No. 2305, Revenue, dated 27th June 1899, the Board of Revenue is requested to consider and advise the Government, at as early a date as practicable, on the following matters :—

If and when the Government makes the declaration under section 2 of Madras Regulation V of 1804, as amended by Madras Act IV of 1899, in respect of the Kálahasti and Karvetnagar zamindaris—

(i) What Collectors should be appointed with reference to the second clause of section 28 to discharge the duties imposed upon a Collector by the Regulation ?

(ii) What arrangements should be made with reference to section 36 ? (It may be assumed that a notification under section 35 will issue).

(iii) Whether any and, if so, what rules should be framed under section 35, clause 2 ?

(By Order.)

Ootacamund,
12th July 1899.

(Signed) N. E. MARJORIBANKS,
Ag. Under Secy. to Government.

To the Board of Revenue (Land Revenue).

Reference on the above, dated 16th July 1899, D. No. 66 (Confdl. No. 16).

Forwarded to the Collectors of North Arcot, Nellore and Chingleput for very early remarks which should be submitted so as to reach the Board by the 30th instant at latest.

(Signed) LIONEL DAVIDSON,
Acting Secretary.

To the Collector of North Arcot,
" " of Nellore,
" " of Chingleput,
} with copy of Official Memorandum.

Read—letter from C. M. MULLALY, Esq., Collector of Nellore, dated 21st July 1899, No. 1436-R–Ver.

Read—letter from D. W. G. COWIE, Esq., m.a., Acting Collector of Chingleput, dated 26th July 1899, No. A (Confdl.).

Read—letter from R. H. CAMPBELL, Esq., I.C.S., Acting Collector and District Magistrate, North Arcot, dated Chittoor, 29th July 1899, Dis. No. 462-R–Ver.

Reference on the above, D. No. 105, Press, dated 12th September 1899.

With reference to clause (iii) of Government Memorandum No. 223, dated 12th July 1899, the Board of Revenue submits, for the approval of Government, a draft set of rules framed under section 35 of Madras Regulation V of 1804 as amended by Madras Act IV of 1899.

2. In drawing up these rules, the Board has had the advantage of the assistance and advice of the Hon'ble V. Bhashyam Aiyangar to whom it is greatly indebted for the time and trouble he has devoted to the somewhat complicated questions involved.

3. The preliminary section merely contains definitions and calls for no remarks. Parts I and III have been modelled on similar rules issued under section 320 of the Civil Procedure Code in other provinces, and present no difficulty.

4. The same cannot be said of the rules contained in Part II ; and a brief explanation of the manner in which they have been drawn up will accordingly be given. The applicability of each of the sections of the Civil Procedure Code as specified in section 37 of the Regulation was at first carefully considered and rules were then drawn up for the purpose of modifying all those sections which could not be made applicable without alteration. In other instances the rules are designedly silent, *e.g.*, section 325 of the Civil Procedure Code applies in its entirety to the case of sales by the Collector. The ordinary case will, no doubt, be that of an estate, the claims against which approximate to the total value of the assets, and, as a rule, a general enquiry such as that contemplated by section 322-A of the Civil Procedure Code will probably be necessary. Part II of the rules consequently deals first with this, the most important case, provision for the cases in which the number and amount of decrees transmitted to the Collector are comparatively trifling, being made in Rule 15 which is modelled upon the procedure contemplated in clause (*a*) of section 321. Rules 3 and 4 are based upon section 322-A, Rules 5, 6 and 7 on section 322-B, Rule 8 on section 322-C and Rule 9 on section 322-D ; Rule 10 is intended finally to put a stop to litigation in regard to claims which have been fully enquired into under the provisions of the preceding rules. Rule 11 is based on section 323, sub-section (3) being designed to secure to the Court of Wards all the powers, which it exercises in the case of an ordinary estate, in those instances where it is managing property as an agent of the Collector to whom the execution of decrees has been transferred. Rule 12 is intended to secure to a creditor the first claim on any specific property which has been pledged to him as security. Rule 13 is based on section 324 and Rule 14 on section 324-A. Rule 16 contains the most important deviation from the provisions of the Civil Procedure Code which empower the Collector to whom a decree is transferred for execution to order the sale of immoveable property if he so thinks fit. One underlying principle of these rules is that no sale shall take place unless it is either unavoidable or clearly in the interests of *both* debtor and creditor. Rules 13 and 16, therefore, prevent the Collector who is the representative of the creditors from proceeding to this extremity until after the period of 20 years has elapsed. The interests of the debtor and his estate are amply secured by this provision, but it is easy to conceive cases in which it might be advantageous to sell a portion of the ward's property at an earlier stage in the management, advantageous, that is, in the interests of the debtor ; and provided the transaction is also beneficial to the creditors, there appears no objection to such a

sale; hence the provision that if the Court of Wards as the representative of the debtor and the Collector as the representative of the creditors agree, the property of the ward may be sold at any time. Rule 17 calls for no special remarks. Rule 19 provides generally for the delegation of powers.

5. In conclusion, the Board desires to draw special attention to the fact that, throughout the rules, care has been taken to make the Regulation Collector subordinate as heretofore to the Court of Wards and as far as possible to reserve to the latter authority all its ordinary powers in cases where it is entrusted with the management of an estate as an agent of the Collector to whom the execution of decrees has been transferred. The Collector himself has been made subordinate, not to the Court of Wards, but to the Board of Revenue, in accordance with the provisions of section 35 of the Regulation as amended.

6. Early orders are requested on this reference, as, until they are received, no permanent arrangements can be made for the management of the two estates of Kálahasti and Karvetnagar and the liquidation of the proprietors' debts.

(Signed) LIONEL DAVIDSON,
Acting Secretary.

To the Secretary to Government, Revenue Department.
" Collector of North Arcot.

Order—Mis. No. 3741, Revenue, dated 27th October 1899.

The draft rules with the Board's Proceedings read above will be forwarded to the Acting Advocate-General who is requested to give his opinion as to the suitability and legality of the rules.

Rule 10, which "is intended finally to put a stop to litigation in regard to claims which have been fully enquired into," seems to require special consideration,—*first* as to whether it is within the scope of the rules which Government may frame under section 35 of the amended Regulation; *second* as to whether it is consistent with the proviso to section 32.

(True Extract.)

(Signed) H. TREMENHEERE,
Ag. Secretary to Government.

To the Advocate-General (through the Government Solicitor).

Read—also endorsement of the Government Solicitor, No. 606, dated 10th November 1899, forwarding the following opinion of the Hon'ble V. Bhashyam Aiyangar, Officiating Advocate-General, Madras, dated 8th November 1899:—

[*Re.* the draft rules framed by the Board of Revenue under section 35 of the Court of Wards Regulation as amended by Madras Act IV of 1899.]

OPINION.

Section 35 of the Regulation as amended empowers Government to frame rules regulating *inter alia* the procedure of the Collector in executing decrees transmitted to him by Civil Courts. Further, section 37 extends certain specified sections of the Code of Civil Procedure, to the execution of such decrees by the Collector which sections, however, are to be *subject* to such modifications as may be made by the rules framed under section 35. The draft rules submitted by the Board of Revenue are *partly* rules framed under section 35, and *partly* reproductions of several of the said sections of the Civil Procedure Code in simpler phraseology and with such modifications as are necessitated by the difference between the scope of the first paragraph of section 320 of the Civil Procedure Code and that of the first paragraph of section 35 of the Regulation. From the standpoint of a draftsman, it may be inartistic to reproduce as rules sections of the Civil Procedure Code which, subject

to the provision that they are applicable only in so far as they are not inconsistent with the Regulation as amended and the rules framed thereunder, are incorporated with the Regulation. It may be considered more artistic to frame the rules under section 35 in such a manner as to leave it a matter of *interpretation* as to how far any of such rules are inconsistent with all or any of the said sections of the Code of Civil Procedure and to what extent such sections are consequently superseded or modified by the rules. While this method may be in a scientific and theoretical point of view excellent, it will be found that in its practical operation it will cause considerable embarrassment and perplexity to the Collector and other Revenue Officers who may have to administer the new Act and the rules framed thereunder in conjunction with the said sections of the Civil Procedure Code; which sections, I may here observe, are in themselves extremely complex and elaborate and by no means easy to interpret. The plan adopted by the Board of Revenue in consultation with me was to reproduce several of the said sections in simpler language and less complex form as part of the rules with such modifications as were necessary to make their working harmonious with section 35 of the Regulation and the policy of the new Act. Under this method, some of the rules alone and portions only of the other rules have the force of law as rules framed under section 35 of the Regulation. The remainder of the rules are not really rules framed under section 35, but have the force of law as *reproductions* of the provisions contained in some of the said sections of the Civil Procedure Code which as aforesaid have been incorporated with the Regulation as amended. To the extent to which the said sections of the Civil Procedure Code have been modified the modification has legal operation as a rule of procedure framed under section 35. In this view none of the draft rules is *ultra vires*. For all *practical* purposes this method has immense advantage over the more scientific method above referred to and will be a safer guide to the Collector and the other Revenue officers who may have to work the new Act.

2. Rule 10 to which my attention has been specially drawn would be *ultra vires* if it is to be viewed as a rule framed under section 35. The last three lines of that rule merely state the legal effect of section 322-D of the Civil Procedure Code except in so far as they extend the operation of the said section 322-D to undisputed claims included in the statement prepared by the Collector under paragraph 2 of section 322-B of the Civil Procedure Code which is reproduced by the Board of Revenue in rule 6 of the draft rules. Disputed claims are referred under paragraph 3 of section 322-B by the Collector to the Court for adjudication and the claim as adjudged is included in the statement prepared under that section. Such adjudication being a judicial decision by a competent court becomes final subject of course to an appeal to the Appellate Court as provided in section 322-D which is reproduced as rule 9 in the draft rules. In the statement prepared by the Collector under paragraph 3 of section 322-B, claims which are undisputed are also included in view to their being liquidated along with debts established by decrees of court. There will therefore be no occasion for any further litigation about the claimants' right to such undisputed debts nor any necessity for formal decrees being obtained thereon. The last three lines of rule 10 simply give expression to the legal consequence of disputed claims being adjudicated upon by the court and undisputed claims being included in the statement prepared by the Collector and may therefore well be expunged. The rest of the rule will be supplementary to sections 322-B and 322-C of the Code of Civil Procedure and operate as a rule framed under section 35 of the Regulation providing that such undisputed claims and claims adjudged by a court on reference made to it shall be deemed to be decrees transmitted to the Collector for execution. So far as undisputed claims are concerned which are dealt with and included in the statement prepared under section 322 B of the Civil Procedure Code it may be that they cannot be regarded as decrees, much less as decrees transmitted to the Collector under section 35 of the Regulation, but under section 322-B of the Civil Procedure Code the Collector is authorised to include them in the liquidation scheme and provide for their discharge along with decreed debts. There is therefore no practical difficulty in including them in rule 10. But in view to remove theoretical objections and an apparent inconsistency with the proviso to section 32 which refers also to

claims allowed by the Regulation Collector. I have modified the first portion of rule 10 by omitting the portion relating to undisputed claims allowed by the Collector.

3. I have also made some changes in rule 14. The last eleven words of the explanation should be deleted and the two paragraphs immediately following the explanation should be numbered as rule 15 as they are substantially reproductions of the last two paragraphs of section 324-A of the Civil Procedure Code and have really no connection with the clause in rule 14 beginning with the word "secondly." That clause is confined only to the claims included in the statement drawn up under rules 6, 7 or 8 and the two paragraphs which immediately follow the explanation and which, as suggested above, are to be converted into rule 15 relate to claims not notified under section 30 of the Regulation or under rule 5 and not included in the statement drawn up under rules 6, 7 or 8. The explanation therefore should have no reference to such last-mentioned claims which have to be postponed under the last two paragraphs of section 324-A of the Civil Procedure Code reproduced in the paragraphs immediately following the explanation to all the claims referred to in the said clause beginning with the word "secondly" in rule 14. The last eleven words of the explanation should be deleted and the two paragraphs immediately following it converted into rule 15, the first word "and" being dropped. The last proviso in the draft rule 14 should be transposed as a proviso to the clause in the said rule beginning with the word "firstly," and it should be inserted before the last word "and" in that clause. Rules now numbered as 15, 16, 17, 18 and 19 should be alterd into 16, 17, 18, 19 and 20, respectively. When the Court of Wards Regulation is revised, it will be better to reproduce and insert in the Act itself the said sections of the Civil Procedure with the necessary modifications so that the rules to be framed under section 35 of the Regulation may not conflict but be consistent with the said sections of the Civil Procedure Code as modified and incorporated with the new Act. In the meanwhile, I think that the draft rules as submitted by the Board of Revenue with the amendments and alterations above referred to and the addition hereinafter to be referred to will be found for all practical purposes sufficient and fairly satisfactory. When experience derived from the working of the rules suggests further amendments and additions the rules will have to be revised.

4. As under the draft rules the ward's property cannot be brought compulsorily to sale before the expiration of twenty years in execution of decrees which have been transmitted to the Collector for execution; there is no necessity to frame rules at present under the third paragraph of section 35 regulating the procedure for the conduct of such sales and the confirmation or setting aside of the same. But in view to orders framed by the Collector in execution of decrees transmitted to him for execution not being subject to appeal or revision to or by Civil Courts of Appellate or of revisional jurisdiction, it is desirable with reference to the fourth paragraph of section 35 to provide under the third paragraph thereof an appeal to the Board of Revenue from the Collector's order, and an appeal to the Collector himself from an order of a gazetted subordinate of his to whom powers may have been delegated under rule 19 (now altered into 20) and to constitute the Board of Revenue as the revisional authority. Under the Code of Civil Procedure all orders passed by Civil Courts in execution proceedings in relation to the execution, discharge or satisfaction of the decree or the stay of execution thereof are appealable as decrees. In the additional rule No. 21 drafted by me, I have provided that the orders passed by the Collector or by any of his gazetted subordinates shall be appealable, respectively, to the Board of Revenue and the Collector and prescribed a period of three months and one month, respectively, for such appeals. Under section 622 of the Code of Civil Procedure the High Court is a Court of Revision and the draft rule No. 21 constitutes the Board of Revenue as the revisional authority in the place of the High Court under paragraph 3 of section 35. With reference to the fourth paragraph of section 35, the effect of the additional rule will be to transfer also the appellate and revisional jurisdiction from the Appellate Civil Courts and High Court to the Collector and Board of Revenue. In the preamble to the rules I have also made a slight verbal alteration with a view to draw attention to the fact that the rules have reference also to section 37 of the Regulation. The copy of the draft rules submitted by the Board of Revenue is herewith returned with the above alterations and additions noted therein.

Additional Rule 21.—From all orders passed by the Collector in execution of decrees transmitted to him under section 35 an appeal shall lie to the Board of Revenue, provided such appeal be preferred within three months from the date of the order appealed against; and the order passed in appeal by the Board of Revenue shall be final.

From all orders passed by a gazetted subordinate of the Collector to whom any of the powers and duties of the Collector have been delegated under rule 20, an appeal shall lie to the Collector provided the same be preferred within one month from the date of the order appealed against, and the order passed by the Collector on such appeal shall be subject to revision by the Board of Revenue.

In computing the period of limitation for an appeal from an order as aforesaid, the day on which the order was passed and the time requisite for obtaining a copy of the order appealed against shall be excluded.

Every order passed by the Collector or by any of his gazetted subordinates which has not been appealed against may, for good and sufficient cause, and on application made by any party deeming himself aggrieved by such order, be reviewed and rescinded or varied by the officer who passed the same or by his successor in office.

Every order passed in appeal by the Collector and from which no application for revision has been preferred to the Board of Revenue and every order passed by the Board of Revenue in appeal or on revision may, for good and sufficient cause, and on application made by any party deeming himself aggrieved by such order, be, respectively, reviewed and rescinded or varied by the Collector who passed the order or his successor in office or by the Board of Revenue.

Read—again Official Memorandum No. 374, dated 20th November 1899, requesting the Board of Revenue to state whether it accepts the opinion of the Advocate-General and the amendments proposed by him as regards the draft rules framed under section 35 of the Court of Wards Regulation amended by Madras Act IV of 1899.

Read—also the following reference of the Board of Revenue (Land Revenue), D. No. 143, dated 12th December 1899:—

The Hon'ble Mr. J. Thomson.

Mr. W. J. H. LeFanu.

Mr. A. W. B. Higgens.

Reference—D. No. 143, dated 12th December 1899.

The Board accepts the Honourable V. Bhashyam Aiyangar's opinion and the amendments suggested by him in the draft rules submitted under Ref. D. No. 105 of the 12th September 1899.

(Signed) W. FRANCIS,
Acting Secretary.

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

Order—No. 871, Revenue, 27th December 1899.

Miscellaneous.

The draft rules as now finally revised are approved and will be published in the *Fort St. George Gazette*.

(True Extract)

(Signed) G. S. FORBES,
Secretary to Government.

To the Board of Revenue (Land Revenue).
„ the Superintendent, Government Press, for publication of the rules.

NOTIFICATION.

Under section 35 of Madras Regulation V of 1804 as amended by Madras Act IV of 1899, and with reference to section 37 thereof, the Governor in Council is pleased to prescribe the following rules for the transmission of decrees from Civil Courts to the Collector and for regulating the procedure of the Collector in executing the same and for retransmitting decrees from the Collector to the Civil Courts :—

Preliminary.

Rule 1.—For the purpose of these rules, unless there be something repugnant in the subject or context,—

(1) "Collector" shall mean the Collector specified in the notification issued under section 35 of Madras Regulation V of 1804 as amended by Madras Act IV of 1899.

(2) "Regulation" shall mean Madras Regulation V of 1804 as amended by Madras Act IV of 1899.

(3) "Regulation Collector" shall mean the Collector who is specified in the notification issued under section 28, but not specified in the notification issued under section 35 of Madras Regulation V of 1804 as amended by Madras Act IV of 1899, and includes a person appointed by name or in virtue of his office as Collector under section 36 of the said Regulation so amended.

(4) "Section" shall mean section of Madras Regulation V of 1804 as amended by Madras Act IV of 1899.

(5) "Ward" shall mean an incapacitated person with reference to whose case a notification under section 35 has been issued; and

(6) Words in the singular shall include the plural and words in the plural shall include the singular.

Part I.

Of the transmission of Decrees from the Civil Court to the Collector.

Rule 2.—On the issue of a notification under section 35 every Civil Court shall transmit to the Collector of the district specified in such notification a copy of every decree which has been passed by it or the execution of which is pending therein and which falls under the category described in such notification.

Such copy shall be transmitted by post or in such other manner as may be most convenient and shall be accompanied by (1) a statement showing the extent, if any, to which the decree has been already executed and clearly setting forth what portion of the decree still remains to be satisfied; (2) a copy of the application, if any, made prior to the issue of the said notification for execution of the decree, and of any order made thereon; (3) any other papers which may be considered necessary in order to enable the Collector to ascertain exactly the nature of the decree and of the proceedings in execution thereof which have already taken place.

The Collector shall notify to the Court the receipt of all documents so transmitted to him.

Part II.

Of the execution of Decrees by the Collector.

Rule 3.—On the issue of the notification under section 35, the Collector shall call upon the Regulation Collector to furnish him with full particulars of all claims notified to him under section 30. The Regulation Collector shall thereupon furnish the Collector with such particulars and shall explicitly state in regard to each such claim which has not been established by a final decree of a Court of competent jurisdiction whether it has been allowed or disallowed either in whole or in part under section 32.

Rule 4.—On receipt of such information the Collector shall give notice to all persons whose claims have been disallowed in whole or in part under section 32 that he proposes to enquire into the merits of such claims. The notice shall be in English and in the language of the district and shall be published by being posted in the cutcherry of the Collector and at such other places, if any, as he may think fit; it shall require such persons to produce the documents, if any, by which their claims are evidenced and shall allow a period of sixty days from the date of its publication for compliance therewith. Where the address of any such claimant is known to the Collector, a copy of the notice shall be sent to him by registered post.

Rule 5.—Upon the expiration of the said period of sixty days the Collector shall appoint a day and place (*a*) for hearing any representations which the Regulation Collector, the holders of decrees transferred in pursuance of the notification issued under section 35 and other persons having pecuniary claims against the ward or his property, whether such claims have been allowed or disallowed in whole or in part under section 32 and whether the same have been notified to the Regulation Collector under section 30 or not, may desire to make, and (*b*) for holding such enquiry as he may deem necessary for informing himself as to the nature and extent of such decrees and claims and of the ward's immoveable property and may, from time to time, adjourn such hearing and enquiry. The Collector shall inform the Regulation Collector of the date and place so fixed and shall also give notice of such date and place in the manner prescribed by rule 4 to the decree-holders and other persons aforesaid requiring them to make either in person or by an agent authorized in writing such representations as they may desire to make in the matter.

Rule 6.—If there be no dispute as to the fact or extent of the liability of the ward in respect of any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims or as to the liability of any immoveable property of the ward for the satisfaction of such decrees or claims, the Collector shall draw up a statement specifying the amount to be recovered for the discharge of such decrees and claims and the rate of interest payable, the order in which, subject to the provisions of section 33, they are to be satisfied, and the immoveable property available for that purpose.

Explanation.—In the case of all claims in respect of which no decree has been passed, it shall be competent to the Collector to fix the rate of interest payable in the same way as if he were a Civil Court drawing up a decree for the payment of money under section 209 of the Civil Procedure Code. Provided that any dispute as to the rate so fixed shall be referred to the Courts under Rule 7.

Rule 7.—If any such dispute arises, the Collector shall refer the same, with a statement thereof and his own opinion thereon, to the Court or any one of the Courts of the highest grade from which any of the decrees has been transmitted to him in pursuance of the notification issued under section 35, and shall, pending the reference, stay proceedings relating to the subject thereof. If the Courts from which decrees have been so transmitted are all of the same grade, then the Collector shall make the said reference to any one of such Courts. The Court shall dispose of the dispute if the matter thereof be within its jurisdiction, or transmit the case to a competent Court for disposal, and the final decision shall be communicated to the Collector. The Collector shall then draw up a statement as above provided in accordance with such decision.

Rule 8.—With the previous sanction of the Board of Revenue, the Collector may, instead of himself issuing the notice and holding the enquiry required by rules 4 and 5, draw up a statement specifying the circumstances of the ward and of his immoveable property so far as they are known to the Collector or appear in the records of his office, and forward such statement to the District Court, and such Court shall thereupon issue the notices, hold the enquiry and draw up the statement required by rules 6 and 7, and transmit such statement to the Collector.

Rule 9.—The decision by the Court of any dispute arising under rule 7 or 8 shall, as between the parties thereto, have the force of, and be appealable as, a decree; and if such decision is varied on appeal, the statement drawn up under rule 7 or rule 8 shall be modified accordingly.

Rule 10.—All claims in respect of which no decree has been transferred to the Collector in pursuance of the notification issued under section 35 shall, if adjudicated upon by the Court under rule 7 or rule 8, be dealt with by the Collector, subject to the provisions of section 33, as if decrees had been passed thereon to the extent, if any, to which such claims are held established by the Court, and the same transmitted to him for execution.

Rule 11.—(1) Whenever the amount to be recovered and the property available have been determined as provided in rule 6, rule 7 or rule 8, the Collector may raise such amount or any portion thereof and interest—

(*a*) by letting in perpetuity or for a term, on payment of a premium, the whole or any part of the said property; or

(*b*) by mortgaging the whole or any part of such property; or

(*c*) by letting on farm, or managing by himself or through the Court of Wards, the whole or any part of such property for any term not exceeding twenty years from the date of the notification issued under section 35; or

(*d*) partly by one of such modes and partly by another or others of such modes.

(2) For the purpose of managing under this rule the whole or any part of such property, the Collector may exercise all the powers of its owner.

(3) In the event of such property or any part thereof being managed through the Court of Wards, such management shall be conducted so far as may be in the same manner as if no notification had been issued under section 35, provided always that the functions of the Collector under the Regulation in respect of other matters than the execution of decrees shall be discharged by the Regulation Collector.

(4) In proceeding under this rule the Collector shall be subject to such rules consistent with the Regulation as may, from time to time, be made in this behalf by the Board of Revenue.

Rule 12.—In the case of decrees directing the sale of specific immoveable property or claims arising from mortgages of specific immoveable property, such property shall be the security for the said debts and the net rents and profits derived by letting, mortgaging or managing the said property shall be set aside for the liquidation thereof, according to the relative priorities of such decrees or claims. For the better determination of such rents and profits, the Collector shall, as soon as conveniently may be, after the expiry of the revenue year in which such lease or mortgage was executed or such management was undertaken and of every successive revenue year declare, subject to the approval of the Board of Revenue, the net annual rents and profits realized from such property and such declaration shall be conclusive evidence of the amount of rents and profits arising or accruing from such property;

Provided that in case such property is managed through the Court of Wards under rule 11 (1) (*c*) such declaration shall be made by the Regulation Collector and be subject to the approval of the Court of Wards.

Rule 13.—If, on the expiration of twenty years from the date of the notification issued under section 35, the amount to be recovered has not been fully paid or realized, the Collector shall notify the fact in writing to the Court of Wards stating at the same time that, if the balance necessary to make up the said amount is not paid to the Collector within six months of the date of such notice, he will proceed to sell the whole or a sufficient part of the said property; and if on the expiration of the said six months the said balance is not so paid the Collector shall sell such property or part accordingly.

Rule 14.—The Collector shall, from time to time, render to the Board of Revenue an account of all moneys which come to his hands and of all charges incurred by him in the exercise and performance of the powers and duties conferred and imposed on him under the provisions of these rules and shall hold the balance at the disposal of the said Board. Such charges shall include all debts and liabilities from time to time due to the Government in respect of the property or any part thereof, the rent, if any, from time to time due to a superior holder in respect of such property or part, the cost of managing such property, if any, and, if the Collector so directs, the expenses of witnesses summoned by him. Such balance shall be applied by the Collector under the direction the said Board as follows:—

Firstly.—In providing for the maintenance of the ward and such members of his family, if any, as are entitled to be maintained out of the income of the property, to such amount in the case of each member as the Board thinks fit: provided that in case the ward's property is managed through the Court of Wards under rule 11 (1) (*c*) the Court of Wards shall determine the subsistence and maintenance due to the ward and the members of his family, and all payments on this account shall be disbursed by the Regulation Collector, as if they were a legitimate charge on the management of such property; and

Secondly.—In discharging rateably the claims included in the statement drawn up under rule 6, rule 7 or rule 8 subject to the relative priorities as therein declared and to the provisions of rule 12 and sub-section (4) of section 39. Provided that it shall be competent to the Collector with the approval of the Court of Wards to disregard the said priorities, if he considers such a course to be in the interest of the claimants as a body.

Explanation.—This proviso does not authorize the Collector to make any payment contravening the provisions of section 33 or section 39 or inconsistent with rule 12.

Rule 15.—No other person possessing any pecuniary claim against the ward or his estate whose claim not having been notified to the Regulation Collector under section 30 or to the Collector under rule 5, has not been included in the statement drawn up under rule 6, rule 7 or rule 8, shall be entitled to be paid out of such property or balance until the decree-holders and claimants specified in the said statement have been satisfied.

And the residue, if any, shall be paid to the Court of Wards or such other person as the Board of Revenue directs.

Rule 16.—In lieu of holding the enquiry contemplated in rules 4 and 5 it shall be open to the Collector to postpone the execution of any decree which may have been transmitted to him in pursuance of the notification issued under section 35, if the Regulation Collector satisfies him that there is reason to believe that the amount of the decree may be raised by mortgage or lease or private sale or management of any property of the ward. In such case the Collector shall permit the postponement of execution for such period as he thinks proper to enable the Regulation Collector to raise the said amount and shall thereupon grant a certificate to the said Regulation Collector authorizing him within a period to be mentioned therein to arrange for the proposed mortgage, lease, sale or management:

Provided that no mortgage, lease or sale under this rule shall become absolute until it has been approved by the Collector and confirmed by the Court of Wards:

Provided further that all moneys payable under such mortgage, lease or sale or forming the profits of such management shall be paid into such Government treasury as the Collector may name, subject only to such deductions as the Court of Wards may consider necessary for the subsistence of the ward and the maintenance of such members of his family as are entitled to be maintained out of the income of the property. Should the requisite amount not be raised within the period specified the Collector shall proceed as hereinbefore directed under rules 4 and 5.

Rule 17.—Except as provided in rule 13 the Collector shall in no circumstances sell the whole or any portion of the immoveable property belonging to the ward. But it shall be competent to the Court of Wards at any time with the approval of the Collector to sell such property or any part thereof.

Rule 18.—Nothing contained in the Indian Limitation Act or in section 230 of the Civil Procedure Code shall be applicable to the execution by the Collector of decrees transmitted to him in pursuance of the notification issued under section 35 of which the execution was not barred on the date of their transmission to the Collector.

Part. III.

Of the Retransmission of Decrees.

Rule 19.—On the complete discharge of any claim the decree relating to which has been transmitted to him in pursuance of the notification issued under section 35, the Collector shall intimate the fact to the Civil Court concerned and retransmit thereto the decree together with all papers received therefrom under rule 2. Should the complete discharge of the claim prove impracticable, notwithstanding the sale of the ward's immoveable property under rule 13, the Collector shall record proceedings setting forth all the steps that have been taken in the execution of the decree from the date of its transmission from the Civil Court to their conclusion and showing the sums that have thereby been realized and have been paid to the claimant or are held by the Collector at the disposal of the Court. A copy of such proceedings shall be transmitted to the Court together with the decree and all papers received therewith as aforesaid. The Court shall grant to the Collector a receipt for the decree and all papers so transmitted.

General Rules.

Rule 20.—For the purpose of these rules the Collector may, with the previous sanction of the Board of Revenue, delegate to any of his gazetted subordinates any of the powers and duties hereby conferred and imposed upon him.

Rule 21.—From all orders passed by the Collector in execution of decrees transmitted to him under section 35 an appeal shall lie to the Board of Revenue provided such appeal be preferred within three months from the date of the order appealed against, and the order passed in appeal by the Board of Revenue shall be final.

From all orders passed by a gazetted subordinate of the Collector to whom any of the powers and duties of the Collector have been delegated under rule 20, an appeal shall lie to the Collector provided the same be preferred within one month from the date of the order appealed against, and the order passed by the Collector on such appeal shall be subject to revision by the Board of Revenue.

In computing the period of limitation for an appeal from an order as aforesaid, the day on which the order was passed and the time requisite for obtaining a copy of the order appealed against shall be excluded.

Every order passed by the Collector or by any of his gazetted subordinates which has not been appealed against, may, for good and sufficient cause and on application made by any party deeming himself aggrieved by such order, be reviewed and rescinded or varied by the Collector who passed the order or his successor in office or by the Board of Revenue.

Ed. Shaik Karim.

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