

Bengal Act IX of 1879
[THE COURT OF WARDS ACT, 1879.]

CONTENTS.

PART I.

Preliminary.

See [ion.

1. Short title.
Extent.
(Commencement.) Repealed.
2. Repeal and savings.
3. Interpretation.
4. Saving of Act XXXIV of 1858 and of jurisdiction of High Court as respects infants.

PART II.

Constitution, Jurisdiction and Powers of the Court of Wards.

5. Constitution and general duties of Court of Wards.
6. Disqualified proprietors.
7. Jurisdiction of Court over disqualified proprietors.
8. Court when bound to give up charge.
9. Discretion of Court as to taking and keeping charge.
- 9A. *(Eastern Bengal.) (Repealed.)*
- 9B. Effect of withdrawal from charge.
10. Application by Civil Court to Court of Wards to take charge.
- 10A. Notice to creditors.
- 10B. Creditors to furnish full particulars and documents.
- 10C. Bar to certain proceedings.
- 10CC. Special limitation for suits against Court of Wards.
- JOD. Adjudication of claims.
- 10E. *(Western Bengal.) (Repealed.)*
11. Procedure when any of the joint proprietors ceases to be disqualified or any person becomes entitled to property jointly with a disqualified proprietor.
12. Withdrawal from charge by Court.
13. Procedure when succession to property of ward disputed.
- 13A. Power of Court to retain charge of property of disqualified proprietor until discharge of

Section. **Ben. Act IX**

14. ~~32~~ General powers of Court. *The Court of Wards Act, 1879.*
15. Exercise through others of powers conferred on Court.
Delegation of powers.
16. Establishments and expenses.
17. *(Repealed.)*
18. Power to manage property.
19. When Court may order property to be formed into separate estate.
20. Appointment of managers and guardians.
21. Custody, education and residence of wards.
22. Allowance for ward and his family,

PART m.

Protection from Sale of certain Estates.

23. *Clause 1.* Estate under charge of Court exempt from sale.
Clause 2. Recovery of arrears of revenue, etc., due at the time when property ceases to be under charge of Court.
Clause 3. Administration of Property by trustees on withdrawal from charge by the Court of Wards.
- 23A. Conditions under which estate may be sold for arrear of revenue accrued under Court.
24. Restriction on sale for arrears of revenue of estate belonging to minor.
Power of Collector to attach such estate.
25. Section 24 not to apply unless notice given.
26. Application of proceeds of estate formed under section 24.

PART IV.

Ascertainment of Disqualification.

27. Procedure for ascertaining and declaring disqualification.
28. Power to enforce provision of ACL without report.
29. Powers of Collector as to preservation of property on death of a proprietor whose heirs should be declared disqualified.
Recovery of expenses if property is not taken under charge of Court.
30. Production of minor proprietor, and order for his temporary custody.
31. Application to Civil Court in case of lunatics.
32. Application to Civil Court to make inquiry regarding disqualification on ground of

of 1879.]

Section,

33. - Similar application when proprietor resides within original jurisdiction of High Court or beyond West Bengal.
34. Power and duties of Courts when inquiry is instituted under section 32 or 33, 34A. Recovery of expenses incurred by Collector under sections 31 to 33.

PART V.

Procedure after Ascertainment of Disqualification.

35. Order declaring person or property to be under charge of Court.
36. Collector to take possession of movable property.
37. Additional powers of Collector.

PART VI.

Management and Guardianship.

38. Collector when to be deemed manager. -
39. **Powers of manager.**
40. General duties of manager.
41. Specific duties of manager.
42. General duties of guardian.
43. Specific duties of guardian.
44. Exclusion of certain interested persons from guardianship.
45. Who to be guardian of female ward.
46. Recovery of sums due to the Court.
47. Court may order guardian or manager to make over properly.
48. Application of moneys received by the manager.
49. Disposal of surplus moneys.
50. Power to invest surplus.

PART VII.

Suits.

51. Manager or Collector to be next friend or guardian in suits by or against ward.
52. Power of Court of Wards to nominate another person to be next friend or guardian for suit.
53. Payment of costs.
54. Service of process against wards.
55. Suits not to be brought on behalf of wards unless authorised by the Court or Wards. 55 A. Indemnity.

PART vm.

Penalties.

- 57. For disobeying certain orders of Collector.
- 58. For disobeying orders under section 47.
- 58A. Penalty on farmer neglecting to furnish accounts, etc.
- 59. For disobeying order of Court.
- 59A. Persons employed by Court to be "public servants".

PART EX.

Miscellaneous.

- 60. Disabilities of wards.
- 60A. Exemption of wards* property from execution proceedings in certain cases.
- 60B. Certain persons to be deemed to be wards.
- 61. Adoption by ward invalid without consent of State Government.
- 62. *(Repealed.)*
- 63. *(Repealed.)*
- 64. Recovery of interest on arrears of rent.
- 64 A. Record of reasons when penalty imposed under section 57 or 58.
- 65. Publication of notices.
- 65A. Procedure when Court's jurisdiction ceases.
- 66. Recovery of expenses after release of property.
- 67. Judicial powers of Collector in making inquiries.
- 68. Appeals.
- 69. Control by Court.
- 69 A. Control by State Government.
- 70. Application of Act to States of Rulers of Indian States.

Power to Court to make rules.

-

The Court of Wards Act, 1879
Bengal Act IX of 1879

[THE COURT OF WARDS ACT, 1879.]'

Ben. Act III of 1881.
Ben. Act II of 1909.
Ben. Act I of 1914.
Ben. Act V of 1915.
Ben. Act VI of 1936.
Ben. Act I of 1939.
E. B. and A. Act I of 1911.

©

Ben. Act I VII of 1880.

"Act IV of 1892.

Act X of 1892.

Act V of 1897.

Act I of 1903.

Ben. Act I of 1906.

Ben. Act IX of 1941.

E. B. and A. Act EH of 1907.

AMENDED

(a) The Government of India (Adaptation of Indian Laws) Order, 1937.

REPEALED IN PART

(b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

REPEALED IN PART AND AMENDED

(c) The Adaptation of Laws Order, 1950.

{30th July, 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 Bengal²;

It is ADAPTED enacted as follows:

PART I.

Preliminary.

I. This Act may be called the Court of Wards Act, 1879:

"[It extends to the States¹ of West Bengal, Bihar and Assam and that part of the State" of Orissa which on the 30th day of July, 1879, was subject to the Lieutenant-Governor of Bengal,]

Short title.

Extent.

¹LEGISLATIVE PAPERS, For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1878, Pt. IV, page 75; for Report of Select Committee, see *ibid.* 1879, Pt. IV, page 31; for further Report of Select Committee, see *ibid.*, page 47; and for Proceedings in Council, see *ibid.* 1878, Supplement, pages 317, 343 and 402. *ibid.* 1879, Supplement, pages 6, 332, 400 and 441.

²This includes the present State of West Bengal and other territory.

³Substituted for the original words by para. 3(1) and the Schedule of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁴The word "States" and "State" were substituted for the word "Provinces" and "Province", respectively, by para. 4(1) of the Adaptation of Laws Order, 1930.

(Part I.—Preliminary.—Sections 2, 3.)

[Commencement.]—Rep. by the Repealing and Amending Act, 1897 {V of 1897}.

Repeal and
savings.

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 1858³, and so much of section 21 of Act XL of 1858² as provides that the Civil Court may direct the 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.

Ben. Act IV of
1870.

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.

3. In this Act, unless there be something repugnant in the subject or context,

"Civil Court" includes the High Court in Calcutta in the exercise of its ordinary and extraordinary original civil jurisdiction or its civil appellate or revisional jurisdiction;

"Collector" includes any officer in charge of the revenue jurisdiction of a district;

"the Court" means the Court of Wards;

¹The Lunacy (District Courts) Act, 1855, it has been repealed entirely by the Indian Lunacy Act, 1912 (IV of 1912.)

²The whole of Act XL of 1858 was repealed by the Guardians and Ward Act, 1890 (VII of 1890).

³The remainder of section 2 (as to pending suits and proceedings) was repealed by s. A and the

The Court of Wards Act, 1879.

of 1873

Third Sch. of the Amending Act, 1903 (I of 1903).

Inserted by s. 2 of the Bengal Court of Wards (Amendment) Act, 1941 (Ben. Act IX of 1941);
regarding its special effect, see section 4 of Ben. Act IX of 1941.

Interpre-
tion.

"Civil
Court",

"Collector"

"the Court".

The Court of Wards Act, 1879.

(Part I.—Preliminary.—Section 4.—Part II.—Constitution, Jurisdiction and Powers of the Court of Wards.—Sections 5, 6.)

or, when the Court of Wards has 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 [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];

"estate"

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

"section" means a section of this Act:

"minor".

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

"section",

"ward".

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

PART H.

Constitution, Jurisdiction and Powers of the 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.

Saving of Act XXXIV of 1858 and of jurisdiction of High Court as respects infants.

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

Constitution and general duties of Court of Wards.

proprietors

- (a) females declared by the Court 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;

³These words were added by s. 2 of the Court of Wards Act (Bengal Amendment Act), 1882 (IV of 1892).

The Lunacy (Supreme Courts) Act, 1858. It has been entirely repealed by the Indian Lunacy Act, 1912 (I of 1912).

(Part II.—Constitution, Jurisdiction and Powers of the Court of Wards.—Sections 7-9.)

(d) persons adjudged by a competent Civil Court to be otherwise rendered incapable by physical defects or infirmities of managing their own property;

(e) persons as to whom the [Court] 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.

Jurisdiction of Court over disqualified proprietors.

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:

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.

When bound to give up charge.

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.

Discretion of Court as to taking and keeping 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,

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

¹Clause (c) was added to section 6 by s. 3 of the Court of Wards Act (Bengal) Amendment Act. 1892 (IV of 1892).

²This word was substituted for the words "Local Government" by the Bengal Decentralization Act, 1915 (Ben. Act V of 1915).

³This proviso was added to section 7 by s. 4 of the Court of Wards Act (Bengal) Amendment Act. 1892 (IV of 1892).

(Part II.—Constitution, Jurisdiction and Powers of the Court of Wards.—Sections 9A, 10.)

9A. When the Court of Wards withdraws from the charge of such property it shall publish, in the manner provided in section 64A, a notice of the termination of the charge and thereupon subject to the provisions of clause 3 of section 236

Effect of withdrawal from charge.

- (a) such charge shall terminate with effect from the date fixed in accordance with the provisions of section 65;
- (h) the owner of the said property shall be restored to the possession thereof from the said date subject to any order made by a Civil Court and to any contracts entered into by the Court of Wards for the preservation or benefit of such property.

9A. [Effect of withdrawal from charge.]—Rep. by s. 2(2) of the Bengal Court of Wards (Amendment) Act, 1935 (Ben. Act VI of 1936).

10. [Whenever a Civil Court is satisfied that an order should be made under section 7 of the Guardians and Wards Act, 1890, appointing a guardian of the person or property of a minor, or both; whenever a Civil Court removes, under section 39 of the same Act, the guardian of a minor,] Application by Civil Court to Court of Wards to take charge.

or whenever a person has been adjudged, under "[the Indian Lunacy Act, 1912,] to be of unsound mind and incapable of managing his affairs, IV of 1912.

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 properly, or to refuse to do so.

The clauses of section 9 which were added by s. 5 of the Court of Wards Act (Bengal) Amendment Act, 1892 (IV of 1892), were repealed, in Western Bengal, by s. 5 of the Bengal Court of Wards (Amendment) Act, 1906 (Ben. Act I of 1906), and in Eastern Bengal, by s. 2(1) of the Eastern Bengal and Assam Court of Wards (Amendment) Act, 1907 (E. B. & A. Act III of 1907), and are omitted. Section 5 of Act IV of 1892 was, in turn, repealed by the Bengal Laws Act, 1914 (Ben. Act I of 1914).

Section 9A was inserted by s. 2(1) of the Bengal Court of Wards (Amendment) Act, 1935 (Ben. Act VI of 1936).

These words and figures were substituted for the original words by s. 6 of the Court of Wards Act (Bengal) Amendment Act, 1892 (IV of 1892).

These words and figures were substituted for the words and figures "Act XXXV of 1858" by s. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

(Part II.—Constitution, Jurisdiction and Powers of the Court of Wards.—Section I OA.)

Nothing contained in [sections 73 to 81 (both inclusive) of the Indian Lunacy Act, 1912,] shall be held to apply to persons or properties under the charge of the Court of Wards.

No. 1, etc. (Q)
creditors.

²10A. (1) Whenever the Court of Wards assumes charge of any person or property under section 7 or section 10, it shall publish, in the manner provided in section 64A, a notice calling upon all creditors having claims against the ward of his immovable property to submit the same in writing to the Court, at a place to be named in the notice, within six months from the date of the publication of the notice aforesaid:

Provided that if a suit or proceeding in respect of a claim is pending in any Civil Court at the date of the publication of such notice, intimation of that fact shall be given by the creditor concerned to the Court of Wards within the period aforesaid and notice of the decision of the Civil Court in respect of such claim shall also be given to the Court of Wards within three months after the final disposal of such suit or proceeding.

(2) Every such claim (other than a claim on the part of [the Government]) not submitted to the Court in compliance with the provisions of sub-section (1), shall, notwithstanding any law, contract, decree or award to the contrary, cease to carry interest from the date of the expiry of the [period for submission of the claim or in any case where a suit or proceeding in respect of a claim is pending in any Civil Court, the period of three months after the final disposal of such suit or proceeding referred to in the said sub-section]:

Provided that, if the Court is satisfied that the creditor was prevented by any sufficient cause from complying with the provisions of sub-section (1), it may consider and allow, either wholly or in part, his claim for interest at any time after the date of the expiry of the period aforesaid.

¹These words and figures were substituted for the words, figures and brackets "sections 12 to 19 (both inclusive) of Act XXXV of 1858" by s. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

²Section LOA as inserted by s. 3 of the Bengal Court of Wards (Amendment) Act, 1906 (Ben. Act I of 1906), was substituted, as modified by section 3(1) of the Bengal Court of Wards (Amendment) Act, 1935 (Ben. Act VI of 1936), for section 1 OA as inserted by s. 3 of the Eastern Bengal and Assam Court of Wards (Amendment) Act 1907 (E. B. & A. Act III of 1907), by the Bengal Court of Wards (Amendment) Act, 1915 (Ben. Act VI of 1936). s. 3(2).

³This proviso was added by s. 3(1) (a) of the Bengal Court of Wards (Amendment) Act, 1935 (Ben. Act VI of 1936).

⁴The words "the Crown" were first substituted for the words "the Government" by para. 3 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter, the word "Government" was substituted for the word "Crown" by para. 4(1) of the Adaptation of Laws Order, 1950.

⁵The words "save in the case provided for by the section 1 OH. sub-section (2). clause (c)" were omitted by s. 3(1)(b)(i) of the Bengal Court of Wards (Amendment) Act, 1935 (Ben. Act VI of 1936).

⁶These words were substituted for the words "period aforesaid" by s. 3 (1)(b)(ii). *ibid.*

(Part il.—Constitution, Jurisdiction and Powers of the Court of Wards.— Sections JOB, IOC.)

10B. (1) Every creditor submitting his claim in compliance with the provisions of sub-section (1) of section 10A shall furnish, along with his written statement of claim, full particulars thereof; and shall, within such time as the Court may appoint, produce all documents which are in his possession, power or control, including entries in books of account, on which he relies to support his claims, together with a true copy of every such document.

Creditors to furnish full particulars and documents.

(2) The Court shall, after marking, for the purpose of identification, every original document so produced, and verifying the correctness of the copy, retain the copy and return the original to the creditor.

(3) If any document, which to the knowledge of the creditor is in his possession, power or control, is not produced by him as required by sub-section (1), the document shall not be admissible in evidence against the ward, whether during the continuance of the management or afterwards, in any suit brought by the creditor or by any person claiming under him in respect of such claim, unless good cause be shown, to the satisfaction of the Civil Court entertaining the suit, for the non-production of the document as required by sub-section (1).

10C. (1) Where any property is in charge of the Court of Wards no Civil Court shall execute any decree or order against the person or property of the ward within four years from the date of the commencement of the Bengal Court of Wards (Amendment) Act, 1935, or from the date of the assumption of charge of the property by the Court of Wards, whichever is later, and for seven years thereafter if the interest due under such decree or order be paid in full every year during the said seven years.

Bar to proceedings.

Ben. Act VI of 1936.

In calculating the period of limitation applicable to an application for the execution of such decree or order, the time during which the execution of such decree or order is barred under this sub-section shall be excluded.

(2) Except as provided in section 23A, no property in charge of the Court of Wards shall be sold by any Revenue authority under any law so long as the Court remains in charge thereof.

"Section 10B as inserted by s. 3 of the Eastern Bengal and Assam Court of Wards (Amendment) Act, 1907 (E. B. & A. Act III of 1907), was substituted, as modified by s. 4(1) of the Bengal Court of Wards (Amendment) Act, 1935 (Ben. Act VI of 1936), for section 10B as inserted by s. 3 of the Bengal Court of Wards (Amendment) Act, 1906 (Ben. Act I of 1906), by s. 4(2) of the Bengal Court of Wards (Amendment) Act, 1935 (Ben. Act VI of 1936).

The words "or the proviso to sub-section (5)" were omitted by s. 4(IJ) (a), *ibid.*

The words "and the Judge receiving any such document shall record his reasons for so doing" were omitted by s. 4(IXb) of the Bengal Court of Wards (Amendment) Act, 1935 (Ben. Act VI of 1936).

"Sections IOC and 10CC were substituted for section IOC by s. 4 of the Bengal Court of Wards (Amendment) Act, 1935 (Ben. Act VI of 1936).

[Ben. Act IX

(Pari //,—Constitution, Jurisdiction and Powers of the Court of Wards.—Sections JOCC-JOE.)

10CC. In calculating the period of limitation applicable to a suit against a ward, a period of four years shall be added to the period of limitation allowed by law.

Special
limitation
for
suits
against
wards,

Adjudication of
claims.

⁵10D. (1) On receipt of all claims submitted in compliance with the provisions of sections 10A and 10B, the Court shall proceed to investigate such claims, and shall decide which of them are to be wholly or partly admitted or wholly or partly rejected, as the case may be, and shall communicate its decision in writing to each claimant concerned.

(2) When the Court has admitted any claim under sub-section (1), it may make to the creditor a proposal in writing for the reduction of the claim, or of the rate of interest to be paid in future, or of both; and, if such proposal, or any modification of it, is accepted by the creditor and his acceptance is finally recorded and attested by the Court, it shall be conclusively binding upon the creditor and upon the ward.

2# * * #

(3) Subject to the provisions of sub-section (2), nothing in this section shall be construed to bar the institution of a suit in a Civil Court for the recovery of a claim against a ward or his property which has been submitted to the Court of Wards:

Provided that no decision of the Court of Wards under this section shall be proved in any such suit as against the defendant.

(4) In calculating the period of limitation applicable to suits for the recovery of a claim which has been submitted to the Court of Wards the period from the date of submission of the claim up to the date of the communication of the Court's decision thereon to the creditor shall be excluded.

10E. [Relinquishment of inextricably involved estate.]—Rep. by s. 7 of the Bengal Court of Wards (Amendment) Act, 1935 (Ben. Act VI of 1936.)

¹Sections 10C and 10CC were substituted for section 10C by s. 5 of the Bengal Court of Wards (Amendment) Act, 1935 (Ben. Act VI of 1936).

²Section 10D as inserted by s. 3 of the Bengal Court of Wards (Amendment) Act, 1906 (Ben. Act I of 1906), were substituted for section 10D as inserted by s. 3 of Eastern Bengal and Assam Court of Wards (Amendment) Act, 1907 (E. B. and A. Act 111 of 1907), by s. 6(2), *ibid.*

³The proviso was omitted by s. 6(1) of the Bengal Court of Wards (Amendment) Act, 1935 (Ben. Act VI of 1936).

(Part 11.—Constitution, Jurisdiction and Powers of the Court of Wards.—
Sections 11-13.)

11. The Court of Wards may retain charge of the whole of the property of any joint proprietors disqualified under section 6 of which the Court has taken charge under section 7, or of any property of which the Court has taken charge under section 10, notwithstanding the fact that a joint proprietor, or some joint proprietors, of such property has or have ceased to be subject to the jurisdiction of the Court or that any person has become entitled to such property or any part thereof jointly with any disqualified proprietor:

Provided that if the share of such proprietor or person is duly partitioned the Court shall, subject to the provisions of section 13A, release such partitioned share:

Provided further that if the disqualified joint proprietor be the manager of a *M'ttakshara* joint family the Court shall, on his ceasing to be so disqualified and on application being made by him in this behalf, release the property.

12. The Court of Wards may at any time withdraw from the charge of any person and property taken under section 10- * * * and from the charge of any *person or* property ¹[which either before or after the commencement of this Act was or is placed] under the charge of the Collector by a Civil Court under section 12, section 14 or section 21 of Act XL of 1858\ or under section 11 of Act XXXV of 1858' ⁶[or under any other enactment for the time being in force]:

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 or 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 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.

Procedure when any of the joint proprietors ceases to be disqualified or any person becomes entitled jointly with the disqualified proprietor.

Procedure when succession to property is disputed.

¹Section 11 was substituted for former section 11, by s. B of the Bengal Court to Wards (Amendment) Act, 1935 (Ben. Act VI of 1936).

The words and figures "or under section 11," were omitted by s. 9 of the Bengal Court of Wards (Amendment) Act, 1935 (Ben. Act VI of 1936).

⁶These words were substituted for the words "which before the commencement of this Act was placed" by s. 8 of the Court of Wards Act (Bengal) Amendment Act, 1892 (IV of 1892).

¹Act XL of 1858 was repealed by the Guardians and Wards Act, 1890 (IV of 1890).

The Lunacy (District Courts) Act, 1858. It has been repealed by the Indian Lunacy Act, 1912 (XV of 1912).

⁶These words were added by s. 8 of the Court of Wards Act (Bengal) Amendment Act, 1892 (IV of 1892).

The Court of Wards Act, 1879.

[Ben. Act IX

(Part II. Constitution. Jurisdiction and Powers of the Court of Wards.—Sections 13A-15.)

Power of Court to retain charge of property of disqualified proprietor until discharge of debts.

13A. If, when any disqualified proprietor dies, or ceases to be disqualified within the meaning of this Act, there remain undischarged any debts or liabilities which were incurred by, or are due from, such proprietor, or which are a charge upon his property or any part thereof [or any liabilities which were incurred by the Court for the benefit of the property of such proprietor],

then, notwithstanding anything contained in the foregoing sections, the Court may either withdraw from the charge of such property or retain such charge until such debts and liabilities, as the Court considers necessary to be discharged, together with all interest due thereon, have been discharged:

Provided that, after the death of a 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 his representative.

General powers 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 in 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, from time to time, delegate any of its powers to such Commissioners or Collectors or other person as aforesaid, and may at any time, revoke such delegation.

¹Section 13 A, as inserted by s. 4 of the Bengal Court of Wards (Amendment) Act, 1906 (Ben. Act of 1906), was substituted for section 13A as inserted by s. 10(2) of the Bengal Court of Wards (Amendment) Act, 1907 (E. B. and A. Act of 1907), by s. 10(2) of the Bengal Court of Wards (Amendment) Act, 1935 (Ben. Act VI of 1936).

³These words were inserted by s. 10(1) of the Bengal Court of Wards (Amendment) Act, 1935 (Ben. Act VI of 1936).

¹The words "with the sanction of the Lieutenant Governor" and "with the like sanction", respectively. WCHMErvnW hv (hi- Ri-nrr-il rwô

336

Exercise
through
others of
powers
conferred
on Coun.

Delegation of
powers.

(Part II.—Constitution, Jurisdiction and Powers of the Court of Wards.—
Sections 16-21.)

Of 1879.]
The Court of Wards Act, 1879.

16. 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 superintendence, for the audit of accounts, and generally for all 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 purpose of which such establishments are, or have been, entertained or such expenses have been incurred.

17. [General contribution for general purposes.]—Rep. by the Government Management of Private Estates Act, 1892 (X of 1892).

18. The Court may sanction the giving of leases or farms of the whole or any part of 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 most for the benefit of the property and the advantage of the ward.

Establish-
ment and
expenses.
Power
LO
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 [State Government], may direct.

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.

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

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.

Appoint -
ment of
manager
S and
guardians.

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.

¹Section 16 was substituted for the original section 16 by s. 3 of the Bengal Court of Wards (Amendment) Act, JS81 (Ben Act XI of 1881).

²The words "Provincial Government" were first substituted for the word "Lieutenant-Governor" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter, the word "State" was substituted for the word "Provincial" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1950.

Custody,
education
and
residence
of
wards.

Part II.—Constitution, Jurisdiction and Powers of the Court of Wards.—
Section 22.—Part III. Protection from Sale of certain Estates.—Section
23.)

Allowance for
ward and his
family.

22. The Court shall allow, for the support [and education] of each ward and [for the support] of his family such monthly sum as it thinks fit (if any) with regard to the rank and circumstances of the parties [and the financial condition of the property of the ward under its charge].

PART III.

Protection from Sale of certain Estates.

Esic under
charge or
Court
exempt from
sale.

23. Clause 1. Except as hereinafter provided by section 23A, every estate, and, subject to the provisions of section 14 of Act XI of 1859, 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 1876⁶, 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, etc.,
due at
the time when
property
ceases to be
under charge
of Court.

Clause 2. If at the time when any property ceases to be under the charge of the Court of Wards, any liabilities enumerated in this clause are outstanding in respect of any part of the property, the Collector may attach the whole or any part of such property whether consisting of estates, or shares or parts of estates, or (enures or holding and collect the rents, cesses and other demands due and all arrears thereof, managing the property so attached either directly or through a manager or by farming as he may think fit:

Provided that such attachment shall not remain in force for a period exceeding five years.

These words were inserted by s. 11(i) of Bengal Court of Wards (Amendment) Act, 1935 (Ben. Act VI of 1935).

These words were inserted by s. 11(ii), *ibid.*

These words were added by s. 11(iii), *ibid.*

Sections 23 and 23A were substituted for the original section 23 by s. 4 of the Bengal Court of Wards (Amendment) Act, 1935 (Ben. Act VI of 1935).

The Beogul Land-revenue Sales Act, 1859.

The Land Registration Act, 1876.

This clause was substituted for the original clause 2 by s. 11(i) of the Bengal Court of Wards (Amendment) Act, 1935 (Ben. Act VI of 1935).

(Part III.—Protection from Sale of certain Estates.—Section 23.)

23. The Collector shall from the proceeds of such property discharge the liabilities of the whole property in the following order of priority:

- (1) cost of management,
- (2) arrears of Government revenue and interest,
- (3) current revenue,
- (4) [cesses due to the Government¹],
- (5) arrears of rent and cess due to the superior landlords and interest thereon,
- (6) [loans due to the Government', including the principal of and interest on any loans advanced by any Government],
and
- (7) current rent.

After satisfaction of the above liabilities the Collector shall, subject to any order of the Civil Court in this behalf, release the property to the proprietor, and pay to him or his duly constituted agent any surplus that remains in the hands of the Collector, and shall furnish such proprietor with an account of the receipts and expenditure extending over the time when the property was under attachment.

Clause 3.6 (1) When the Court of Wards decides to withdraw from Administration the charge of any property on the ground that, in its opinion, the property is insufficient to pay the liabilities of the proprietor, secured and unsecured, within a reasonable period, it shall give the proprietor and his creditors all such opportunities as it thinks reasonable to come to an agreement by the Court regarding the release of the property from the charge of which it is about to withdraw and if any such agreement is reached, the Court of Wards, if it is of opinion that the agreement is valid, shall release the property to the proprietor.

If the property is not so released, the Court of Wards may, upon notice to the proprietor, call a meeting of his creditors to elect not less than two trustees to administer the property. At such meeting the creditors shall have votes in proportion to the debts owing to them respectively. The opinion of creditors to whom three-fourths of the debts of the proprietor are owing shall prevail. This procedure relating to the holding of such meeting shall be laid down by the Court of Wards.

¹These words were substituted for the words "cesses due to Government" by para. 3 and Sch. LV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²The word "Government" was substituted for the word "Crown" by the Adaptation of Laws Order, 1950.

³These words were substituted for the words "other Government, dues including the principal and interest on loans advanced by Government, if any," by para. 3 and Schedule IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴This clause was added by s. 12(ii) of the Bengal Court of Wards (Amendment) Act, 1935 (Ben. Act VI of 1936).

■

(Pari HI.—Protection from Sale of certain Estates—Section 23k.)

If the creditors fail to elect the trustees or if the trustees elected refuse to act within a time to be fixed by the Court of Wards, the Court of Wards may appoint the trustees. The trustees so elected or appointed shall be deemed to be appointed by the Civil Court.

(2) Upon the trustees, so elected or appointed, as the case may be, expressing their willingness to act as trustees the property shall, subject to the right of the Collector to attachment, collection and discharge of the liabilities mentioned in section 23, vest in them, in trust to administer it under the directions of such Civil Court as may be prescribed by rules for discharging the other liabilities of the proprietor and making over the residue, if any, to him. The Collector shall pay to the trustees, instead of to the proprietor or his agent, any surplus that remains in his hands. Notice of the withdrawal of the Court of Wards and the vesting of the property in the trustees shall be published in the manner provided in section 64 A.

(3) Upon the vesting of the property in the trustees the charge of the Court of Wards shall be deemed to be withdrawn but the proprietor shall not become liable to arrest or imprisonment in execution of any decree or order for such liabilities.

(4) Any adjudication of claims by the Court of Wards or compromise under section 10D shall be binding in the same manner and to the same extent as if the Court of Wards had not withdrawn from charge of the property and as if the Civil Court had made such adjudication or recorded such compromise,

(5) The Civil Court shall have all the powers given by law, including the law of insolvency, for the administration of the said property and the trusts mentioned above and shall also have power to remove trustees and appoint new trustees.

(6) The proprietor or the creditors will be at liberty to apply to the Civil Court from time to time, as there may be occasion, for such removal or

appointment, for the framing of a scheme of administration, or for the termination of the trust and discharge of the trustees.

(7) The form of notice, the manner of service thereof, the manner of signifying the willingness of trustees to act, the procedure for the election of trustees and the Civil Court under whose directions the trustees shall administer the property may be prescribed by rules to be framed by the [State Government].

Condition 5 under which estate may be sold for arrears or Avrik-accrued under Court.

*23A. Notwithstanding anything in clause 5, section 8, Regulation I of 1793¹, 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 provision of the law for the time being in force for the recovery of arrears of Government

¹The words "Provincial Government" were first substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter, the word "Siare" was substituted for word "Provincial" by para. -4(1) of the Adaptation of Laws Order, 1950.

²See footnote A on page 336, ante.

of 1879.]

The Court of Wards Act, 1879.

The Bengal Permanent Settlement Regulation, 1793

341

of 1879.]

The Court of Wards Act, 1879.

(Pan ill.—Protection from Sale of certain Estates.—Sections 24-26.— Part IV.—
Ascertainment of Disqualification. Section 27.)

revenue, if the Court has certified in writing that the interests of the ward require that such estate, share or part be sold, and has stated in such writing the reasons upon which it has arrived at such conclusion.

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.

Restriction on sale for arrears of revenue or estate belonging to minor.

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;'

Power of Collector to attach such 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.

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 authorised to receive them for the proprietor, or shall dispose of them in any of the modes mentioned in section 49 or in section 50.

Section 24 not to apply unless notice given,

Application of proceeds of estate farmed under section 24.

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 inquiry 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.

Procedure for ascertaining and declaring disqualification.

The Court of Wards Act, 1879.

340

[Ben. Act IX

Parr IV.—Ascertainment of Disqualification.—Sections 28-31.)

Power to enforce provisions of Act without report.

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

Powers of Collector as to preservation of property on death of a proprietor whose heirs should be declared disqualified.

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.

Recovery or expenses if property is not taken under charge of Court.

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 1868², or any similar law for the time being in force.

Production of minor proprietor, and order for his temporary custody.

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.

Application to Civil Court in case of lunatics.

31. If a sole proprietor or 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

²See foot-note 1 on page 338. ante. -
The Bengal Land-revenue Salts Act, 1868.

(Part IV.—Ascertainment of Disqualification.—Sections 32-34.)

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 IV or 1912. provisions of [the Indian Lunacy Act, 1912], to the Civil Court of the district within the jurisdiction of which such proprietor may reside.

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 inquire into and determine the question as to the alleged incapacity.

Application to Civil Court to make inquiry 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 at Calcutta], or resident beyond the territory administered by the [State Government] * * 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-Parganas, or to such other Civil Court as the [State Government], on application made to [it] by the Collector in that behalf, may determine.

Similar application when proprietor resides within original jurisdiction of High Court or beyond West Bengal.

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

Powers and duties of Courts when inquiry is instituted under section 32 or section 33.

34. When any inquiry is instituted by a Civil Court under section 32 or section 33, such Court shall, for the purposes of making such inquiry, have the powers conferred, and proceed in the manner prescribed, by [the Indian Lunacy Act, 1912,] with respect to the inquiries directed to be made by the said Act.

The Civil Court shall transmit to the Court of Wards a copy of the order made on each such inquiry; 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,

Footnote 4 in page 329, ome.

Substituted for the words "The High Court of Judicature at Fort William in Bengal" by para. 3 and the Eleventh Schedule of the Adaptation of Laws Order, 1950.

The words "Provincial Government" were first substituted for the word "Lieutenant-Governor" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter, the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order 1950.

The words "of West Bengal" were omitted by para. 3 and the Eleventh Schedule of the Adaptation of Laws Order, 1950.

This word was substituted for the word "him" by paragraph 5(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

342

(Part IV.—Ascertainment of Disqualification.—Section 34A.—
Part V.—Procedure after Ascertainment of Disqualification.—Sections 35, 36.)

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 82 of the Indian Lunacy Act, 1912), with reference to persons adjudged to be of unsound mind and incapable of managing their affairs.

iv of
1912.

recovery
of expenses
incurred by
Collector
under sections
31 to 33.

34A. All expenses incurred, by a Collector in taking action under section 31, section 32 or section 33 in respect of any person shall, if the property of such person is not taken under the charge of the Court, be recoverable from such person or from the person whom the Collector finds to be in possession of such property, under the procedure provided by the [Bengal Public Demands Recovery Act, 1913], for the recovery of public demands.

Ben. Act III of
1913.

PART V,

Procedure after Ascertainment of Disqualification.

Order
declaring
person or
property to
be under
charge of
court.

35. Whenever the Court has determined to take the person or property of a disqualified proprietor under its charge, when the order is made 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.

Collector to
take
possession
of movable
property.

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 authorised in writing by "him in that behalf, shall, take possession of all accounts, papers and movable property of the ward, and place under proper custody such portion thereof as he may think necessary.

Any such Collector, or some person authorised 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.

"These words and figures were substituted for the words and figures "section 21 of Act XXXV of 1818" by s. 2 and (the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

Section 34A as inserted by section 5 of the Bengal Court of Wards (Amendment) Act, 1906 (Ben. Act I of 1906), was substituted for section 34A as inserted by section 7 of the Eastern Bengal and Assam Court of Wards (Amendment) Act, 1907 (E. B. and A. Act 111 of 1907), by s. 13(2) of the Bengal Court of Wards (Amendment) Act, 1935 (Ben. Act VI of 1935).

These words and figures were substituted for the words and figures "Public Demands Recovery Act, 1895" by s. 13(1) of the Bengal Court of Wards (Amendment) Act, 1935 (Ben. Act VI of 1935).

*(Part V. Procedure after Ascertainment of Disqualification.—Section 37.—
Part VI.—Management and Guardianship.—Sections 38-41.)*

37. Any such Collector may also order all persons in the employ of Additional the ward, or all persons who were in (he employ of ihe deceased proprietor necio^o/ from whom the ward has derived his property, to attend before him;

and may order any person to deliver up any accounts, papers or mo vabfc properly belonging to Uic ward, or any accounts cr papers relati ng lo ihe ward's property, which the Collector has reason to believe are in such person's possession,

and may order all holders or tenures and under-tenures on such property to produce their lilies to such tenures and under-tenures.

PART VI.

Management and Guardianship.

38. If no manager of the property of a ward is appoi nlett hy the Court, [he Collector of the district in which ihe greater part of such properly is situated, or a ny o ther Col le dor whom lhe Court may appoint in thai behalf, shall be competent (a do, under the orders of ihe Court, anything thai might be lawfully done by the manager of such properly. .

Collector when to be deemed manager.

39. Every manager appointed by the Coun shall have poiver to manage all property which may be committed lohis charge, to collect Lhe rents of the land entrusted to him, as well as all other money due lo lhe ward, and to grant receipts therefor;

Power 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 lhe property committed to him d i i g e n t l y and faithfully for the benefit of ihe proprietor, and shaft, in every respecL, act lo lhe best of his judgment for the ward's interest as if lhe properly were his own.

General duties of manager.

41. Every manager appointed by lhe Court shallô
(a) have the care of so much of lhe property of the ward as the Court may direct;

Specific duties of manager,

(b) give such security (if any) as the Coun i h i n k s fit, to the Collector, duly to account for all such property and for whai he shall receive in respect of such properly;

(c) continue liable to account lo the Court, after he has ceased to be manager, for his receipts and disbursements during lhe period of his management;

(d) pass his accounts at such periods and in such forms as the Court may direct;

(Pari VI.—Management and Guardianship.—Sections 42-45.)

- (c) pay [he balance doc from Kim thereon;
- (f) apply for the sanction or the Court 10 any aci which may involve the property in expense not previously sanctioned by such Court;
- (g) si gn all pap e rs, deeds, documents and wrilings which may be executed by him by virtue of his officc;
- (h) be entitled to such allowance, to be paid out of the propeny, as the Court may think fn, for his care and pains in the execjtion of his duties;
- (i) be responsible for any loss occasioned to the property by his wilful default or gross ngligence.
42. A guardian appointed to ihe care of a ward shall be charged with the custody of the ward, and must look lo his maintenance, health, and, if he be a minor, to his education.
43. Every guardian appointed by Ihe Court shall ô
- (a) give such security (if any) as ihe 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 lo the Coun, 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, lo be paid out of the property of the ward, as the Court may think Fit, for his care and pains in ihe execution of the duties.
44. No person who would be ihe next legal heir of a ward or would otherwise be immedially interested in oul living a ward, shall be appointed to be his guardian; but nothing in this section shall apply lo ihe mother of a ward or lo 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. Who to be guardian of female ward.
But no guardian shall ordinarily be appointed or continued, for a female ward if she has an adult husband.

General
of
guardian,

Specific
of
guardian.

Exclusion
of certain
interested
persons from
guardianship

Who to be
guardian of
female ward.

(Part Vf.—Management and Guardianship. Sections 46-48.)

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 1866* or any similar law for the time being in force.

Recovery of sums due to the Court.

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.

Court may order guardian or manager to take over property.

48. 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.

Application of moneys received by the manager.

Unless the Board of Revenue shall specially otherwise direct, priority shall be given to the purposes included in class I over those included in class II, to the purposes included in class II over those included in class III and to the purposes included in class III over those included in class IV.

Class I.

- (1) The payment of all charges necessary for the management and supervision of the property of the ward,
- (2) the payment of the charges referred to in section 22, and
- (3) 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.

- (1) 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, and
- (2) the payment of interest at not more than four and a half per centum per annum on all debts incurred by the Court on behalf of the ward or on all debts incurred by the ward which the Court has admitted in the following order of priority:
 - (a) debts incurred by the Court in order to consolidate or pay off previous debts incurred at a higher rate of interest,
 - (b) debts secured by immovable property of the ward,
 - (c) debts which the Court has reduced under sub-section (2) of section 10D, and
 - (d) other debts which the Court has admitted.

The Bengal Land Revenue Sales Act, 1868.

Section 48 was substituted for the former section 48 by s. 14 of the Bengal Court of Wards (Amendment) Act, 1935 (Ben. Act VI of 1936).

(Part VI.—Management and Guardianship.—Section 49.)

■ *Class III.*

(1) The maintenance in an efficient condition of the estates, buildings and other immovable property belonging to the ward, and

(2) the payment, on such scale as the Court may authorise, of such religious, charitable and other allowances not exceeding the amounts 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 and such expenses for the education of the members of the ward's family as the Court may authorise to be paid.

Class IV.

(1) The payment of the difference between interest at four and a half *per centum per annum* and interest at the rate contracted for on all debts of the ward admitted by the Court in the order specified in clauses (b), (c) and

(d) of item (2) in class II,

(2) liquidation of the principal amount of the debts in reasonable instalments, and

(3) improvement of the land and property of the ward and the benefit of the ward and his property generally.

Disposal of
surplus

49. If the ward is a female of sound mind, who has completed her age of twenty-one years, or a male who has completed his age of twenty-one years, whose property is under the charge of the Court under clause (e) of section 6], "[any surplus which remains after providing, so far as the Court may think fit, for the objects mentioned in section 48], shall be paid to such ward:

Provided that, before paying any portion of such surplus to such ward, the Court may deduct therefrom and retain at its disposal any sums which it may consider necessary to retain

(1) as a working balance for the management of the property and expenses incidental thereto;

(2) in order to make provision for any special charges which are expected to become payable on account of the property, and which probably cannot be met from the expected surplus of the following years.

Section 49 was substituted for the original section 49 by s. 5 of the Bengal Court of Wards (Amendment) Act, 1881 (Ben. Act III of 1881).

These words were substituted for the words "to remain under the charge of the Court with his consent under section 11" by s. 10 of the Court of Wards Act (Bengal) Amendment Act, 1892 (IV of 1892).

These words were substituted for the original words by s. 15 of the Bengal Court of Wards (Amendment) Act, 1881 (Ben. Act III of 1881).

of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter, the words "or of the Federation" were omitted by para. 3(1) and the Schedule of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948, and finally, the word "State" was substituted for the word "Province" by para. 4(1) of the Adaptation of Laws Order, 1950.

"Substituted for the words "has been guaranteed" by para. 3 and the Eleventh Schedule of the Adaptation of Laws Order, 1950.

The words "any Central or Provincial Act" were first substituted for the words "any Act of a Legislature established in British India" by para. 3(1) and the Schedule of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948. Thereafter, the words "any Central or Provincial Act or Act of the Legislature of a Part A State or Part C State" were substituted for the words "any Central or Provincial Act" by para. 3 and the Eleventh Schedule of the Adaptation of Laws Order, 1950.

"These words were substituted for the words "Government of India" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

The words "the Provincial Government" were first substituted for the words "the Government of Bengal" by para. 3(1) and the Schedule of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948. Thereafter, the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

"These words within square brackets were added, for Western Bengal, by the Bengal Court of Wards (Amendment) Act, 1909 (Ben. Act II of 1909), s. 2. and, for Eastern Bengal, by the Eastern Bengal and Assam Court of Wards (Amendment) Act, 1911 (E.B. and A. Act I of 1911), s. 2. The former Act has been extended to Eastern Bengal by the Bengal Laws Act, 1914, (Ben. Act I of 1914), s. 3, Sch. I, and the latter Act has been repealed by the same Act, s. 6, Sch IV

(Part VI.—Management and Guardianship.—Section 50.)

SO. If the ward is not a female or [male] as aforesaid, and if any Power is surplus remains after providing, so far as the Court may think fit, for [the objects mentioned in -[section 48], 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
3[Central Government or the Government of] the United Kingdom of Great Britain and Ireland;

4[bonds, debentures and annuities which, before the fifteenth day of August, 1947, were charged by an Act of Parliament of the United Kingdom] on the revenues of India 3[or of any State];

stock or debentures of or shares in railway or other companies the interest whereon 6[had, before the fifteenth day of August, 1947, 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 7[any Central or Provincial Act or Act of the Legislature of a Part A State or Part C State]; or

8[any other securities, stocks or shares, guaranteed by the [Central Government] or "[the State Government, as to the Court shall seem fit; 10[or,

mortgages on immovable property],
(Part VII.—Suits.—Sections 51-56.)

Manager or Collector to be next friend or guardian in suits by or against ward.

Power of Court of Wards to nominate another person to be next friend or guardian for suit.

PART VII.

Suits.

51. In every suit brought by or against any ward he shall be therein described as a ward of Court; and the manager of such ward's property, or, if there is no manager, the Collector of the district in which the greater part of such property is situated^ or any other Collector whom the Court of Wardsmay appoint in that behalf, shall be named as next friend or guardian for the suit, and shall in such suit represent such ward; and no other person shall be ordered (to sue or be sued as next friend or be named as guardian for the suit by any Civil Court in which such suit may be pending.

52. The Court of Wards may, by an order, nominate or substitute any other person to be next friend or guardian for any such suit; and, upon receiving a copy of any such order of substitution, the Civil Court in which such suit is pending shall substitute the name of the next friend or guardian for the suit so appointed for the name of the manager or Collector.

53. If in any such suit any Civil Court shall decree any costs against the next friend or guardian for the suit of the ward, 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.

54. Every process which may be issued out of any Civil Court against

any ward shall be served, through the Collector, upon the next friend or guardian for the sui as aforesaid of such ward.

349

55. No suit shall be brought on behalf of any ward [by a manager], unless the same be authorised by some order of the Court:

Provided that a manager may authorise a plaint to be filed in order to prevent a suit from being barred by the law of limitation; but such suit shall not be afterwards 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 authorised by an order of the manager of the landed property on which such rents are due.

Indemnity.

-55A. No decree or order shall be made by a Civil Court against any person for anything done, honestly and with due diligence under this Act.

56. *[Saving of suits in High Court.]—Rep. by s. 3 of the Bengal Court of Wards (Amendment) Act, 1941 (Ben. Act IX of 1941).*

These words were inserted by s. 1 of the Bengal Court of Wards (Amendment) Act, 1881 (Ben. Act III of 1881).

-Section 55A was inserted by s. 16 of the Bengal Court of Wards (Amendment) Act. (Q.T.W.Ren Art VI of 1936).

Payment of costs.

Service of process against wards.

Suits not to be brought on behalf of wards unless authorised by the Court of Wards.

[Ben. Act IX
350

The Court of Wards Act, 1879.

The Court of Wards Act, 1879.

of 1879.]

(Part VIII.—Penalties.—Sections 57-58A.)

PART VIII.

Penalties.

57. Any person who refuses to comply with an order of a Collector under sections 29, 30, 36 or 37 shall be liable, by order of the Collector, to a fine not exceeding five hundred rupees.

For disobeying certain orders of Collector.

58. Any person who refuses to comply with an order made under section 47 may be punished, by order of the Court, with simple imprisonment and attachment of his property until the order is complied with:

For disobeying orders under section 47.

¹ Provided that [he 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 or property required within such time as the Collector shall think fit. The Collector may, at any time, rescind such order of release, and direct that effect shall be given to the previous order of imprisonment.

² 58A. Any farmer, holding or having kist 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 fails 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.

Penalty on farmer neglecting to furnish Decoum. etc,

Such notice shall be served by tendering to the person to whom it may be directed a copy (hereof, 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.

This proviso was added by s. 8 of the Bengal Court of Wards (Amendment) Act, 1881 (Ben. Act VII of 1881).

¹ W/1879 WA II/1879 in 1879

(Pan VIJI. Penalties. Sections 59, 59A.—Part JX.—Miscellaneous. — Sections 60, 60A.)

[Ben. Act IX

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.

Fur disobeying order of Coun.

59. Any person who disobeys any lawM 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.

Persons employed by Court to be "public servants".

59A. Every person employed by the Court under this Act shall, for the purposes of the Indian Penal Code, be deemed to be a public servant.

Act XLV of 1860.

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, [or to assign over or charge any allowance to be received by him from the Court,]

Disabilities of wards.

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 Wards*1 properly from proceedings in certain cases

Section 59A was inserted. For Western Bengal, by the Bengal Court of Wards (Amendment) Act, 1906 (Ben. Act 1 of 1906), s. 7, and, for Eastern Bengal, by the Eastern Bengal and Assam Court of Wards (Amendment) Act, 1907 (E. B. and A. Act 1 of 1907), s. 9.

These words were added to section 60 by s. 12 of the Court of Wards Act (Bengal Amendment) Act, [891 (IV of 1892),

1 - 0 i - i *

of 1879.]

The Court of Wards Act, 1879.

(Pari IX.—Miscellaneous.—Sections 60B-64.)

60B. For the purposes of [section IOC], Pari VII and sections 60 and 60A, [a person whose property is under the charge of the Court or Wards under section 1 i by reason of the fact that such person has become entitled to the property jointly with a disqualified proprietor,] or charge of whose property has been retained under section 13A, shall be deemed to be a ward, but only so far as regards such property.

Certain persons to be (kicived to be wards.

61. No adoption by any ward, and no wriucn or verbal permission lo adopt given by any ward, shall be valid without the consent of the "[State Government], obtained either previously or subsequently lo such adoption, or to the giving of such permission, on application made to [ii] llirough the Court.

Adoption by ward invalid wiili om consent of State Govern men!.

62. [Sections 60 and 61 not to apply in ceiiain cases.]—Rep., in Western Bengal, by the Bengal Court of Wards (Amendment) Act, J 906 (Ben. Act I of 1906), and, in Eastern Bengal, by the Eastern Bengal and Assam Court of Wards (Amendment) Act. 1907 (E. B. and A. Act III of 1907).

63. [Arrears of rent how recoverable.]—Rep. by the Public Demands Recovery Act, 1880 (Ben. Act VII of 1880).

63. Any amount of interest which has accrued due, on arrears of rent or other demand recoverable as rent payable lo the manager of an estate which is in charge of the Court, may he recovered in any manner and by any process according to which such arrears may be recovered under any law Tor the lime 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 direci that any costs incurred by the manager in obtaining such order cr 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.

Recovery of interest On arteon: oT rem.

64. When any penalty is jntposed 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

Record of reasons when penalty imposed under section 5^ or 58.

Section 60B was inserted, Tor Western Bengal, by the Bengal Coun of Wards (Amendmeni) Act. 1906 (Ben. Act I of 1906), s. B. ,11'd, far Eastern Bengal, by the Eastern Bengal an J Assan i Coun or Wards (Amendmeni) Act, 1907 (E. B and A. Act 111 of 1907), s. 10.

This ward and figure wen: insetted by s. 17(a) of the Bengal Court of Wards (Amendmeni) Act, 1935 (Ben. Act VI of 1936).

These words were substituted for [Vic words "a person whose properly is under (be charge of the Court of Wards by virtue of the second clause of section it" by s. 17(b), r"bid

'See foot-note 3 on page 341, nme.

'See foot-note 5 on page 341, ante.

^Seelion 6) was enacted by the Bengal Court of Wards (Amendmeni) Act. 1881 (Ben. Act III of 1881), s. 10, instead of section 63 repealed by the Public Demands Rtcovey

(Part IX.—Miscellaneous.—Sections 64A-65A.)

**[Ben. Act IX
352**

64A. Any notice required to be published by the provisions or ²[section 9A or of sub-section (1) of section 10A or clause 3 of section 23 and any order required to be published under section 65], shall be published

- (a) in the *Official Gazette*;
- (b) in at least three issues each of one English and one Vernacular newspaper published in Calcutta;
- (c) in two issues of a newspaper (if any) published in the district or Division in which the ward ordinarily resides, or has last resided; and
- (d) by posting such notices on the notice boards in the offices of the Collector and of the Judge of the district in which the place named in the notice is situated.

Publication or notices.

Procedure when Court's jurisdiction cases,

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 ⁵[in the manner provided in section 64 A.] -

^b65A. Any expense incurred by the Court on account of any property under its charge may, after the release of such property, be recovered ⁷* * * * ^H[as a public demand under the Bengal Public Demands Recovery Act, 1913,] 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.

¹Section 64 A as inserted by s. 10 of the Bengal Court of Wards (Amendment) Act, 1906 (Bri. Act I of 1906), was substituted for section 64A as amended by s. 12 of the Eastern Bengal and Assam Court of Wards (Amendment) Act, 1907 (E. B. and A. Act III of 1907), by s. 18(2) of the Bengal Court of Wards (Amendment) Act, 1935 (Ben. Act VI of 1936).

²These words and figures were substituted for the words and figures "sub-section (1) of section 10A, or of sub-section (1) of section 10E" by s. 18(1) of the Bengal Court of Wards (Amendment) Act, 1935 (Ben. Act VI of 1936).

³Clause (a) was substituted for the original clause (a) by Sch. III of the Bengal Laws Act, 1914 (Ben. Act I of 1914).

⁴The words "*Official Gazette*" were substituted for the words "*Catcutva Galeae*" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵These words were substituted for the words "as the court may direct" by s. 19 of the Bengal Court of Wards (Amendment) Act, 1935 (Ben. Act VI of 1936).

⁶Section 3A was inserted by s. II of the Bengal Court of Wards (Amendment) Act, 1935 (Ben. Act VI of 1936).

⁷The brackets and words "(as if it were an aircar of land-revenue or)" were omitted by s. 20(a) of the Bengal Court of Wards (Amendment) Act, 1935 (Ben. Act VI of 1936).

⁸These words were substituted for the words "as a demand, under Bengal Act VII of 1913" by s. 19 of the Bengal Court of Wards (Amendment) Act, 1935 (Ben. Act VI of 1936).

Recovery of expenses after release of property.

Ben. Act III of 1913.

(Part IX.—Miscellaneous.—Sections 66-70.)

Act v of
1908.

66. A Collector making any inquiry under (his Act may exercise any power conferred by the Code of Civil Procedure, [1908,] on a Civil Court for the trial of suits.

Judicial powers of Collector in making inquiries.

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 by 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 State Government].

Control by State Government.

³69A. The powers and functions conferred on the State Government by or under this Act shall, in relation to the estates of Rulers of Indian States, be powers and functions of the Central Government.

Application of Act 10 estates of Rulers of Indian States.

70. The Court may make rules, consistent with this Act, to

- (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; and
- (g) generally for the better fulfilment of the purposes of this Act.

Power to Court to make rules.

The Court may from time to time alter, add to or repeal such rules.

¹These figures were inserted by s. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1936 (Ben. Act I of 1939).

²See footnote 3 on page 341. *ante*.

³inserted by para. 3 and the Eleventh Schedule of the Adaptation of Laws Order, 1950."

⁴This word was substituted for the word "person" by s. 6 of the Bengal Court of Wards (Amendment) Act, 1881 (Ben. Act III of 1881).

⁵This word and figure were substituted for the word and figure "section 49" by s. 6. *ibid*.

⁶These words were substituted for the words "Government of India or of by para. 3 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order.

of 1879.]
The Court of Wards Act, 1879.

354

1937.
Substituted for the words "bonds, debentures and annuities charged by Act of Parliament"
by para. 3 and the Eleventh Schedule of the Adaptation of Laws Order, 1950.

of 1879.]
The Court of Wards Act, 1879.

355