

ACT No. XXXIV OF 1858.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA.

(Received the assent of the Governor General on the 14th September 1858.)

*An Act to regulate proceedings in Lunacy in the Courts of Judicature established by Royal Charter.*

WHEREAS the several Courts of Judicature established by Royal Charters within the British Territories in India are authorized and empowered by their respective Charters to appoint guardians and keepers of the persons and estates of Lunatics, and to inquire into, hear, and determine questions of alleged Lunacy by inspection of the person or by such other ways and means by which the truth may best be discovered and known ; and whereas, according to the practice of the said Courts, questions of alleged Lunacy are determined by inquisition taken before a jury, and it is expedient to lessen the cost and to alter the mode of enquiry into such questions, and also to empower the said Courts to make provision for the due management of the estates of Lunatics ; It is enacted as follows :—

I. It shall be lawful for any of the said Courts of Judicature, on such application as is hereinafter mentioned, to make an order directing an enquiry whether any person subject to the jurisdiction of the Court, who is alleged to be Lunatic, is or is not of unsound mind and incapable of managing himself and his affairs. The order may also contain directions for other enquiries concerning the nature of the property belonging to the alleged Lunatic, the persons who are his relatives or next of kin,

Court may order enquiry as to persons alleged to be insane.

of unsound mind

Order for enquiry may also direct concerning property, &c. of alleged Lunatic.

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the time during which he has been of unsound mind, or such other matters as to the Court shall seem proper.

II. Application for such enquiry may be made by any persons related by blood or marriage to the alleged Lunatic, or by the Advocate General.

Application by whom to be made.

III. The order made by the Court upon such application shall direct the enquiry to be by the Court itself. It shall nevertheless be lawful for the Court, if it see sufficient cause for so doing, to direct the enquiry to be executed in Chambers before a single Judge of the Court. Reasonable notice of the time and place appointed for the enquiry shall be given to the alleged Lunatic. If it shall appear that the alleged Lunatic is in such a state that personal service on him would be ineffectual, the Court may direct such substituted service of the notice as it shall think proper. The Court may also, if it think fit, direct a copy of such notice to be served upon any person related by blood or marriage to the alleged Lunatic. If the enquiry be directed to be executed before a single Judge, it shall be lawful for the alleged Lunatic, at any time before the day fixed for the enquiry, to demand an enquiry before the full Court. In such case the enquiry shall be by the Court, and a further day shall be appointed for making such enquiry; and in such case the Court may direct such further notices (if any) to be given, as it may think requisite.

Ordinarily, enquiry to be by the Court.

Court may for sufficient cause direct enquiry by a single Judge.

Notice of enquiry to be given to Lunatic.

Service of Notice.

Lunatic may demand enquiry before full Court.

IV. The Court may, at any time after the application, require the alleged Lunatic to attend at such convenient time and place, within twenty miles of the place of residence of the said Lunatic, as it may appoint for the purpose of being personally examined by the Court or by any person from whom the Court may desire to have a report of the mental capacity and condition of such alleged Lunatic.

Court may, at any time after the application, require attendance of Lunatic for the purpose of being personally examined.

V. The Court may likewise, at any time after the application for such enquiry, make an order authorizing any person or persons to be therein named, to have access to the alleged Lunatic for the purpose of a personal examination.

And may authorize persons to have access to the Lunatic for the purpose of examination.

VI. The

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VI. The attendance and examination of the alleged Lunatic under the provisions of the two last preceding Sections, shall, if the alleged Lunatic be a woman who, according to the custom and manners of the country, ought not to be compelled to appear in public, be regulated by the rules in force for the examination of such persons in other cases.

Rules respecting attendance and examination where the alleged Lunatic is a woman of rank.

VII. If the enquiry is made by a Judge of the Court, the Judge executing the enquiry shall, while so employed, have power (subject to the provisions of the last preceding Section) personally to examine the alleged Lunatic and take such evidence, on oath or otherwise, and call for such information as he may think fit or the said Court may direct in order to ascertain whether the alleged Lunatic is or is not of unsound mind, and shall have the like powers and authority as are or may be vested by law in a Judge or Master of the said Court for the investigation of matters referred to them by the Court. The Judge shall report to the Court the result of the enquiry.

Powers of Judge executing the enquiry.

Judge to report.

VIII. If the alleged Lunatic be not within the local limits of the jurisdiction of the Court, and the enquiry cannot conveniently be made in either of the modes hereinbefore provided, the Court may direct the enquiry to be made before any principal Court of original jurisdiction in Civil cases within whose local jurisdiction the alleged Lunatic may be; and such last mentioned Court shall accordingly proceed to make such enquiry in the same manner as if the alleged Lunatic were subject to its jurisdiction, and shall certify its finding upon the matters of enquiry to the Court directing the enquiry. The evidence taken upon the enquiry shall be recorded by the Court in the English language in the form of a narrative, and a copy thereof, certified by the Court, shall be transmitted, together with any remarks the Court may think fit to make thereon, to the Court by which the enquiry was directed.

Court may in certain cases direct enquiry to be made before any principal Civil Court of original jurisdiction within whose local jurisdiction the alleged Lunatic may be.

IX. If the report of the Judge or the finding of a Court under the last preceding Section appear to the Court directing the enquiry to be defective or insufficient in point of form, it shall be lawful for such last mentioned Court either to amend

If report of Judge or finding of Court appear defective or insufficient in form, it may be amended by the Court directing the enquiry.

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amend the same or to refer it back to the Judge or the Court which made the enquiry to be amended.

X. It shall be lawful for the Court, on the application of the person at whose instance the order directing an enquiry was made or on the application of the alleged Lunatic or of any of his relatives authorized by the Court to make the application, to direct a new trial of the matters of enquiry according to the usual course and practice of the Court in directing new trials in Civil cases. If such application be granted in a case tried by a single Judge, the order granting the same shall direct the enquiry to be made by the full Court. If the application be granted in a case tried under Section VIII, the Court directing the new trial may give such directions regarding the same as it shall see fit.

XI. The Court shall make such order as may appear just respecting the costs of any enquiry under this Act, and may include therein such remuneration to Physicians and Surgeons as the Court, having regard to the nature of the enquiry, shall deem reasonable.

XII. If no new trial be directed, the finding of the Court to which the application for enquiry was made, if the enquiry have been made by such Court, or the report of the Judge, or the finding of the Court to which the enquiry may have been referred under the provisions of Section VIII, as the case may be, shall be of the same force and effect, and be proceeded on in the same manner in regard to the appointment of Committees of the person and estate of the Lunatic, as the inquisition now according to practice taken upon the oath of a jury.

XIII. It shall be lawful for the Court, on the appointment of Committees of the person and estate of a Lunatic, to direct by the order of appointment, or by any subsequent order, that the person to whom the charge of the estate is committed, shall have such powers for the management thereof as to the Court shall seem necessary and proper, reference being had to the nature of the property, whether moveable or immoveable, of which the estate may consist. But such powers shall not extend to the sale or charge by way

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of mortgage of the estate or any part thereof, or to the letting of any immovable property unless for a term not exceeding three years.

XIV. The Master of the Court shall be at liberty, without an order of reference, to receive any proposal and conduct any enquiry respecting the management of the estate of a Lunatic, if such proposal relate to any matter which the Committee of the estate has not been empowered by an order under the last preceding Section to dispose of. The Master may likewise, without reference, receive and enquire into any proposal relating to the sale or charge by way of mortgage of the estate or of any part thereof, or to the letting of any immovable property for a term exceeding three years.

XV. The Master shall report to the Court on the proposal; and the Court shall, subject to the provisions of this Act, make such order upon the report and respecting the costs, as shall, under the circumstances, seem just.

XVI. The Court or the Master shall once in the matter of each Lunacy, and may afterwards from time to time, determine whether any one or more and (if any) how many and which of the relatives or next of kin shall attend before the Master, at the cost of the estate, in any proceeding connected with the management thereof; and, if any such relative or next of kin is an infant, may from time to time appoint a fit person to be his guardian for the purposes of the Lunacy.

XVII. The Court may, on application made to it by petition concerning any matter whatsoever connected with the Lunacy, make such order, subject to the provisions of this Act, respecting the application and the costs thereof, and of the consequent proceedings, as shall, under the circumstances, seem just.

XVIII. The Court may, if it appears to be just, or for the Lunatic's benefit, order that any property, moveable or immovable, of the Lunatic, and whether in possession, reversion, remainder, contingency, or expectancy, be sold or charged by way

by way of mortgage or otherwise disposed of, as may seem most expedient for the purpose of raising money to be applied for any of the following purposes:—

1. The payment of the Lunatic's debts, including any debt incurred for his maintenance or otherwise for his benefit.
2. The discharge of any incumbrance on his estate.
3. The payment of or provision for the expenses of his future maintenance and the maintenance of his family, including the expenses of his removal to Europe, when he shall be so removed, and all expenses incidental thereto.
4. The payment of the costs of any enquiry under this Act, and of any costs incurred by order or under the authority of the Court.

XIX. The Committee of the Lunatic's estate shall, in the name and on behalf of the Lunatic, execute all such conveyances and instruments of transfer relative to any sale, mortgage, or other disposition of his estate as the Court shall order. In like manner such Committee shall, under the order of the Court, exercise all powers whatsoever vested in a Lunatic, whether the same are vested in him for his own benefit or in the character of trustee or guardian.

XX. Where a person, having contracted to sell or otherwise dispose of his estate or any part thereof, afterwards becomes Lunatic, the Court may, if the contract is such as the Court thinks ought to be performed, direct the Committee of the estate to execute such conveyances and to do such other acts in fulfilment of the contract as it shall think proper.

XXI. If a member of a partnership firm be found Lunatic, the Court may, on the application of the other partners, or of any person who appears to the Court to be entitled to require the same, dissolve the partnership; and thereupon, or upon a dissolution by decree of Court



of Court or otherwise by due course of law, the Committee of the estate may, in the name and on behalf of the Lunatic, join with the other partners in disposing of the partnership property upon such terms, and shall do all such acts for carrying into effect the dissolution of the partnership, as the Court shall think proper.

XXII. Where a Lunatic has been engaged in business, the Court may, if it appear to be for the Lunatic's benefit that the business premises should be disposed of, order the Committee of the estate to sell and dispose of the same; and the monies arising from such sale shall be applied in such manner as the Court shall direct.

XXIII. Where a Lunatic is entitled to a lease or under-lease, and it appears to be for the benefit of his estate that it should be disposed of, the Committee of the estate may, by order of the Court, surrender, assign, or otherwise dispose of the same to such person for such valuable or nominal consideration, and upon such terms as the Court shall think fit.

XXIV. If a Lunatic is possessed of any landed property situate beyond the local limits of the jurisdiction of the Court, which, by the law in force in the Presidency wherein such land is situated, subjects the proprietor, if disqualified, to the superintendence of the Court of Wards, the said Court of Wards may assume the charge of such landed property and manage the same according to the rules for the time being in force for such management. Provided that, in such case, no further proceedings in respect of the Lunacy shall be taken under any such law, nor shall it be competent to the Court of Wards or to any Collector to appoint a guardian of the person of the said Lunatic or a manager of the estate except of the landed property which so subjects the proprietor as aforesaid. Provided also that the surplus of the income of such landed property, after providing for the discharge of the Government Revenue and expenses of management, shall be disposed of from time to time in such manner as the Supreme Court shall direct, and not otherwise. Provided further that nothing contained in this Section shall affect

When and to what extent Court of Wards may assume charge of land belonging to a Lunatic.

Proviso.

Surplus income of the land, after payment of Government Revenue, &c., to be disposed of as the Supreme Court shall direct.

Provisions of this Section not to affect certain powers given to the Supreme Court by the Act.

affect the powers given to the Supreme Court by Sections XVIII, XIX, and XX of this Act or (except so far as relates to the management of the said landed property which so subjects the proprietor as aforesaid) the powers given by any other Section of this Act.

XXV. Where any Stock or Government Securities or any Share in a Company (transferable within the said territories or the dividends of which are payable there) is standing in the name of, or is vested in a Lunatic, beneficially entitled thereto, or in a Committee of the estate of a Lunatic, or in a trustee for him, and the Committee dies intestate, or himself becomes Lunatic, or is out of the jurisdiction of the Court, or it is uncertain whether the Committee be living or dead, or he neglects or refuses to transfer the Stock, Securities, or Shares, or to receive and pay the dividends to a new Committee or as he directs, within fourteen days after being required by him to do so, then the Court may order some fit person to make such transfer, or to transfer the same, and to receive and pay over the dividends in such manner as the Court may direct, and such transfer or payment shall be valid and effectual for all purposes.

XXVI. Where any such Stock or Government Securities or Share in a Company is standing in the name of, or vested in any person residing out of the said Territories, and not in any part of the United Kingdom, the Court, upon being satisfied that such person has been declared of unsound mind, and that his personal estate has been vested in a curator or manager, according to the laws of the place where he is residing, may order some fit person to make such transfer of the Stock, Securities, or Shares, or of any part thereof, to such curator or manager or otherwise, and also to receive and pay over the dividends and proceeds, as the Court may think fit; and any act done in pursuance of such order shall be valid and effectual for all purposes.

XXVII. If it appears to the Court, having regard to the situation and condition in life of the Lunatic and his family and the other circumstances of the case, to be expedient that his property should be made available for his or their maintenance in a direct and inexpensive manner, it may, instead of appointing a Committee

Court may in certain cases apply property for Lunatic's maintenance without appointing Committee.



a Committee of the estate, order that the property if money or if of any other description the produce thereof, when realized, be paid to such person as the Court may think fit, to be applied for the purpose aforesaid ; and all payments so made shall be a good discharge to the person making the same.

XXVIII. If it appears to the Court that the unsoundness of mind of a Lunatic is in its nature temporary, and that it is expedient to make temporary provision for his maintenance or for the maintenance of his family, the Court may, in like manner as under the last preceding Section, direct his property or a sufficient part of it to be applied for the purpose aforesaid.

XXIX. When any person has been found of unsound mind, and it shall be shown to the Court, either on the application of such person or of any other person acting on his behalf, or on the information of any other person, that there is reason to believe that such unsoundness of mind has ceased, the Court may make an order for enquiry whether such person is or is not still of unsound mind and incapable of managing himself and his affairs. The enquiry shall be conducted in the same manner and subject to the same rules as are hereinbefore prescribed for an enquiry into the unsoundness of mind of an alleged Lunatic ; and if it be found that the unsoundness of mind has ceased, the Court shall order all proceedings in the matter of the Lunacy to cease or to be set aside on such terms and conditions as under the circumstances of the case shall appear proper.

XXX. The Court may, from time to time, make such orders, not inconsistent with the provisions of this Act, as shall seem meet for carrying into effect the purposes of this Act, and for regulating the mode of proceeding before the Court, or before a Judge of the Court, or the Master, in matters of Lunacy.

XXXI. Every power given by this Act to the Master of any of the said Courts may also be exercised by a Judge of any of the said Courts, and shall in the Court of Judicature of Prince of Wales' Island, Singapore, and Malacca be exercised by the Recorder of the said Court or of any division thereof.

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XXXII. Unless

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XXXII. Unless the contrary appears from the context, the word  
Interpretation. "Lunatic," as used in this Act, shall mean any person  
"Lunatic." found by due course of law to be of unsound mind and  
incapable of managing his affairs. Words importing the singular number  
Number. shall include the plural number, and words importing  
the plural number shall include the singular. Words  
Gender. importing the masculine gender shall include females.