

ACT No. XXXV OF 1858.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA.

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

An Act to make better provision for the care of the Estates of Lunatics not subject to the jurisdiction of the Supreme Courts of Judicature.

WHEREAS it is expedient to make better provision for the care of the estates of Lunatics not subject to the jurisdiction of the Supreme Courts of Judicature ; and to prescribe general rules by which the state of mind of persons not subject to such jurisdiction, who are alleged to be Lunatic, may be enquired into and ascertained ; It is enacted as follows :—

I. So much of Section V Regulation X. 1793, of Section IX Regulation LII. 1803, of Regulation I, 1800, and of Section XXIX Regulation VIII. 1805 (extended to Benares by Section II Regulation VI. 1822), of the Bengal Code ; and so much of Sections VI and VII Regulation V. 1804, and of Sections XX and XXII of the said Regulation (as modified by Section III Regulation X. 1831), of the Madras Code as relate to Lunatics or idiots—are hereby repealed.

II. Whenever any person not subject to the jurisdiction of the Supreme Courts, who is possessed of property, is alleged to be a Lunatic, the Civil Court, within whose jurisdiction such person is residing, may, upon such application as is hereinafter mentioned, institute an enquiry for the purpose of ascertaining whether

Civil Court on application may institute enquiry when a person possessed of property is alleged to be a Lunatic.

whether such person is or is not of unsound mind and incapable of managing his affairs.

III. Application for such enquiry may be made by any relative of the alleged Lunatic or by any Public Curator appointed under Act XIX of 1841, or by the Government Pleader, or if the property of the alleged Lunatic consist in whole or in part of land or any interest in land, by the Collector of the District in which it is situate. If the property or any part thereof be of such a description as by the law in force in any Presidency where such property is situate would subject the proprietor, if disqualified, to the superintendence of the Court of Wards, the application may be made by the Collector on behalf of the Court of Wards.

IV. When the Civil Court is about to institute any such enquiry as aforesaid, it shall cause notice to be given to the alleged Lunatic of the time and place at which it is proposed to hold the enquiry. 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 direct a copy of such notice to be served upon any relative of the alleged Lunatic.

V. The Civil Court may require the alleged Lunatic to attend at such convenient time and place 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. The Court may likewise make an order authorizing any person or persons therein named to have access to the alleged Lunatic for the purpose of a personal examination.

VI. The attendance and examination of the alleged Lunatic under the provisions of the last preceding Section shall, if the alleged Lunatic be a woman who, according to the manners and customs 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.

VII. The

VII. The Civil Court, if it think fit, may appoint two or more persons to act as Assessors to the Court in the said enquiry. Upon the completion of the enquiry, the Court shall determine whether the alleged Lunatic is or is not of unsound mind, and may make such order as to the payment of the costs of the enquiry by the person upon whose application it was made, or out of the estate of the alleged Lunatic if he be adjudged to be of unsound mind, or otherwise, as it may think proper.

VIII. If the alleged Lunatic reside at a distance of more than fifty miles from the place where the Civil Court to which the application shall have been made is held, the said Court may issue a Commission to any subordinate Court, to make the enquiry, and thereupon the said subordinate Court shall conduct the enquiry in the manner hereinbefore provided. On the completion of the enquiry the subordinate Court shall report its proceedings with the opinions of the Assessors, if Assessors have been appointed, and its own opinion on the case ; and thereupon the Civil Court shall make such order in the case as it may think proper.

IX. When a person has been adjudged to be of unsound mind and incapable of managing his affairs, if the estate of such person or any part thereof consist of property which by the law in force in any Presidency subjects the proprietor, if disqualified, to the superintendence of the Court of Wards, the Court of Wards shall be authorized to take charge of the same. In all other cases, except as otherwise hereinafter provided, the Civil Court shall appoint a Manager of the estate. Any near relative of the Lunatic or the Public Curator, or, if there be no Public Curator, any other suitable person, may be appointed Manager.

X. Whenever a Manager of the estate of a Lunatic is appointed by the Civil Court, the Court shall appoint a fit person to be Guardian of the person of the Lunatic. The Manager, unless he be the Public Curator, may be appointed Guardian. Provided always that the legal heir of the Lunatic shall not in any case be appointed Guardian of his person.

XI. If

XI. If the estate consist in whole or in part of land or any interest in land not subject to the jurisdiction of the Court of Wards, the Civil Court, instead of appointing a Manager, may direct the Collector to take charge of the estate, and thereupon the Collector shall appoint a Manager of the property and a Guardian of the person of the Lunatic. All the proceedings of the Collector in the charge of estates under this Act shall be subject to the control of the superior Revenue Authorities.

Court may direct Collector to take charge of Lunatic's estate if consisting of land not subject to Court of Wards.

Proceedings of Collector subject to control of superior Revenue Authorities.

XII. If the person appointed to be Manager of the estate of a Lunatic, or the person appointed to be Guardian of a Lunatic's person, shall be unwilling to discharge the trust gratuitously, the Court or the Collector, as the case may be, may fix such allowance or allowances to be paid out of the estate of the Lunatic as, under the circumstances of the case, may be thought suitable.

Remuneration of Managers and Guardians.

XIII. The person appointed to be Guardian of a Lunatic's person shall have the care of his person and maintenance. When a distinct Guardian is appointed, the Manager shall pay to the Guardian such allowance as shall be fixed by the Court or the Collector, as the case may be, for the maintenance of the Lunatic and of his family.

Duties of Guardian.

XIV. Every Manager of the estate of a Lunatic appointed as aforesaid may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a Lunatic: and may collect and pay all just claims, debts, and liabilities due to or by the estate of the Lunatic. But no such Manager shall have power to sell or mortgage the estate or any part thereof, or to grant a lease of any immoveable property for any period exceeding five years, without an order of the Civil Court previously obtained.

Powers of Managers.

XV. Every person appointed by the Civil Court or by the Collector to be Manager of the estate of a Lunatic shall, within six months from the date of his appointment, deliver in Court or to the Collector, as the case may be, an inventory of the landed property belonging to the Lunatic and of all such

Managers to furnish inventory and annual accounts.

such sums of money, goods, and effects, as he shall receive on account of the estate, together with a statement of all debts due by or to the same. And every such Manager shall furnish to the Court or to the Collector annually, within three months of the close of the year of the era current in the District, an account of the property in his charge, exhibiting the sums received and disbursed on account of the estate and the balance remaining in his hands. If

Proceeding if accuracy of inventory or accounts be impugned.

any relative of the Lunatic, or any public Officer, by petition to the Court, shall impugn the accuracy of the said inventory and statement, or of any annual account, the Court may summon the Manager and enquire summarily into the matter and make such order thereon as it shall think proper ; or the Court, at its discretion, may refer any such petition to any subordinate Court or to the Collector if the Manager was appointed by the Collector.

XVI. All sums received by a Manager on account of any estate in excess of what may be required for the current expenses of the Lunatic or of the estate, shall be paid into the public Treasury on account of the estate and may be invested from time to time in the public Securities.

Manager to pay proceeds of estates into the public Treasury.

XVII. It shall be lawful for any relative of a Lunatic to sue for an account from any Manager appointed under this Act, or from any such person after his removal from office or trust, or from his personal representative in case of his death, in respect of any estate then or formerly under his care or management or of any sums of money or other property received by him on account of such estate.

Relative may sue for an account.

XVIII. The Civil Court, for any sufficient cause, may remove any Manager appointed by the Court, not being a Public Curator, and may appoint such Curator or any other fit person in his room, and may compel the person so removed to make over the property in his hands to his successor, and to account to such successor for all monies received or disbursed by him. The Court may also, for any sufficient cause, remove any Guardian appointed by the Court. In like manner the Collector, for any sufficient cause, may remove any Manager or Guardian appointed by the Collector ; and the Court, on the application of the Collector, shall compel any Manager so removed to deliver his accounts and the property in his hands.

Removal of Manager or Guardian by Civil Court.

Removal by Collector.

XIX. The Civil Court may impose a fine not exceeding five hundred Rupees on any Manager of the estate of a Lunatic who wilfully neglects or refuses to deliver his accounts or any property in his hands within the prescribed time or a time fixed by the Court, and may realize such fine by attachment and sale of his property under the rules in force for the execution of decrees of Court, and may also commit the recusant to close custody until he shall deliver such accounts or property.

XX. If it appears to the Civil Court, having regard to the situation and condition in life of the Lunatic and his family, and the amount and description of his property, to be unnecessary to appoint a Manager of the estate as hereinbefore provided, the Court may, instead of appointing such Manager, 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 maintenance of the Lunatic and his family.

XXI. When any person has been adjudged to be of unsound mind and incapable of managing his affairs, if such person or any other person acting on his behalf or having or claiming any interest in respect of his estate, shall represent by petition to the Civil Court, or if the Court shall be informed in any other manner, that the unsoundness of mind of such person has ceased, the Court may institute an enquiry for the purpose of ascertaining whether such person is or is not still of unsound mind and incapable of managing his affairs. The enquiry shall be conducted in the manner provided in Section IV and the four following Sections of this Act ; and if it be adjudged that such person has ceased to be of unsound mind and incapable of managing his affairs, the Court shall make an order for his estate to be delivered over to him, and such order shall be final.

XXII. Except as otherwise herein provided, all orders made by a Civil Court or by any subordinate Court under this Act, shall be open to appeal under the rules in force for appeals in miscellaneous cases.

XXIII. The

XXIII. The word "Lunatic," as used in this Act, unless the contrary appears from the context, shall mean every person found by due course of law to be of unsound mind and incapable of managing his affairs. The expression "Civil Court" shall mean the principal Court of original jurisdiction in the District. Words importing the masculine gender shall include females.

Interpretation.
"Lunatic."
"Civil Court."
Gender.