

ACT No. XL OF 1858.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA.

(Received the assent of the Governor General on the 11th December 1858.)

An Act for making better provision for the care of the persons and property of Minors in the Presidency of Fort William in Bengal.

WHEREAS it is expedient to make better provision for the care of the persons and property of Minors not brought under the superintendence of the Court of Wards ; It is enacted as follows:—

Preamble.

I. Regulation I. 1800, Clause 8 and the six following Clauses of Section XXIX Regulation VIII. 1805, Section V Regulation XVII. 1805, and so much of Sections II and III Regulation V. 1799, and of Clauses 2 and 3 Section XVI Regulation III. 1803, as restrict the interference of the Civil Courts in cases of inheritance by Minors, are repealed.

Regulations repealed.

*Repealed
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II. Except in the case of proprietors of estates paying Revenue to Government who have been or shall be taken under the protection of the Court of Wards, the care of the persons of all Minors (not being European British subjects) and the charge of their property shall be subject to the jurisdiction of the Civil Court.

Persons and property of Minors not under the protection of the Court of Wards shall be subject to jurisdiction of Civil Court.

III. Every person who shall claim a right to have charge of property in trust for a Minor under a Will or Deed, or by reason of nearness of kin, or otherwise, may apply to the Civil Court for a Certificate of administration ; and no person shall be entitled to institute or defend any suit connected with the estate of which he claims the charge until he shall have obtained such Certificate. Provided that, when

What persons claiming to have charge of property in trust for a Minor may apply for Certificate of administration.

No person to institute or defend a suit without such Certificate.

when the property is of small value, or for any other sufficient reason, any Court having jurisdiction may allow any relative of a Minor to institute or defend a suit on his behalf, although a Certificate of administration has not been granted to such relative.

IV. Any relative or friend of a Minor in respect of whose property such

Who may apply to Court to appoint a person to take charge of the property &c. of a Minor. Certificate has not been granted, or, if the property consist in whole or in part of land or any interest in land, the Collector of the District may apply to the Civil Court to appoint a fit person to take charge of the property and person of such Minor.

To what Court application to be made, if property be situate in more than one District. V. If the property be situate in more than one District, any such application as aforesaid shall be made to the Civil Court of the District in which the Minor has his residence.

VI. When application shall have been made to the Civil Court either by

Summary enquiry to be made by Court on application. a person claiming a right to have charge of the property of a Minor, or by any relative or friend of a Minor, or by the Collector, the Court shall issue notice of the application and fix a day for hearing the same. On the day so fixed, or as soon after as may be convenient, the Court shall enquire summarily into the circumstances and pass orders in the case. Provided always

Proviso. that it shall be competent to the Civil Court to direct any Court subordinate to it to make such enquiry and report the result.

VII. If it shall appear that any person claiming a right to have charge

Certificate of administration to whom to be granted. of the property of a Minor is entitled to such right by virtue of a Will or Deed, and is willing to undertake the trust, the Court shall grant a Certificate of administration to such person. If there is no person so entitled, or if such person is unwilling to undertake the trust, and there is any near relative of the Minor who is willing and fit to be entrusted with the charge of his property, the Court may grant a Certificate to such relative. The Court may

Court may appoint person having such Certificate, Guardian of the Minor's person. also, if it think fit (unless a Guardian have been appointed by the father), appoint such person as aforesaid or such relative or any other relative or friend of the Minor, to be Guardian of the person of the Minor.

VIII. The Court may call upon the Collector or Magistrate for a report on the character and qualification of relative or friend of the Minor who may be desirous or willing to be entrusted with the charge of his property or person.

IX. If no title to a Certificate be established to the satisfaction of the Court by a person claiming under a Will or Deed, and if there be no near relative willing and fit to be entrusted with the charge of the property of the Minor, and the Court shall think it to be necessary for the interest of the Minor that provision should be made by the Court for the charge of his property and person, the Court may proceed to make such provision in the manner hereinafter provided.

X. If the estate of the Minor consist of moveable property or of houses, gardens, or the like, the Court may grant a Certificate to the Public Curator appointed under Section XIX Act, XIX of 1841 (for the protection of moveable and immovable property against wrongful possession in certain cases), or, if there be no Public Curator, to any fit person whom the Court may appoint for the purpose.

XI. Whenever the Court shall grant a Certificate of administration to the estate of a Minor to the Public Curator or other person as aforesaid, it shall at the same time appoint a Guardian to take charge of the person and maintenance of the Minor. The person to whom a Certificate of administration has been granted, unless he be the Public Curator, may be appointed Guardian. If the person appointed to be Guardian be unwilling to discharge the trust gratuitously, the Court may assign him such allowance, to be paid out of the estate of the Minor, as under the circumstances of the case it may think suitable. The Court may also fix such allowance as it may think proper for the maintenance of the Minor, and such allowance and the allowance of the Guardian (if any) shall be paid to the Guardian by the Public Curator or other person as aforesaid.

XII. If

XII. If the estate of the Minor consist, in whole or in part, of land or any interest in land, the Court may direct the Collector to take charge of the estate, and thereupon the Collector shall appoint a Manager of the property of the Minor and a Guardian of his person, in the same manner and subject to the same rules in respect of such appointments and of the duties to be performed by the Manager and the Guardian respectively, so far as the same may be applicable, as if the property and person of the Minor were subject to the jurisdiction of the Court of Wards.

XIII. In all enquiries held by the Civil Court under this Act, the Court may make such order as to the payment of costs by the person on whose application the enquiry was made, or out of the estate of the Minor or otherwise as it may think proper.

XIV. Whenever one or more of the proprietors of an estate, which has come under the jurisdiction of the Court of Wards on account of the disqualification of all the proprietors, ceases to be disqualified, and the estate, in consequence, ceases to be subject to the jurisdiction of the Court of Wards, notwithstanding the continued disqualification of one or more of the co-proprietors, the Collector of the District in which the estate is situate may represent the fact to the Civil Court; and the Court, unless it see sufficient reason to the contrary, shall direct the Collector to retain charge of the persons, and of the shares of the property of the still disqualified proprietors, during the continuance of their disqualification, or until such time as it shall be otherwise ordered by the Court. The Collector shall in such case appoint a Guardian for the care of the persons, and a Manager for the charge of the property of the disqualified proprietors, in the manner prescribed in Section XII. If the property be situate in more than one District, the representation shall be made by the Collector who had the general management of the property under the Court of Wards, and the orders of the Court of that District shall have effect also in other Districts in which portions of the property may be situate.

XV. The

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XV. The proceedings of the Collector in the charge of estates under this Act shall be subject to the control of the superior Revenue Authorities.

XVI. The Public Curator and every other Administrator to whom a Certificate shall have been granted under Section XI shall, within six months from the date of the Certificate, deliver to the Court an inventory of any immovable property belonging to the Minor, and of all such sums of money, goods, effects, and things as he shall have received on account of the estate, together with a statement of all debts due by or to the same. And the Public Curator and every such other Administrator shall furnish annually, within three months from the close of the year of the era current in the District, an account of the property in his charge, exhibiting the amounts received and disbursed on account of the estate, and the balance in hand. If any relative or friend of a Minor 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 Curator or Administrator and enquire summarily into the matter, and make such order thereon as it shall think proper; or the Court at its discretion may refer such petition to any subordinate Court.

XVII. All sums received by the Public Curator or such other Administrator on account of any estate, in excess of what may be required for the current expenses of the Minor 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.

XVIII. Every person to whom a certificate shall have been granted under the provisions of this Act, may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a Minor, and may collect and pay all just claims, debts, and liabilities due to or by the estate of the Minor. But no such person shall have power to sell or mortgage any immovable property, or to grant a lease thereof for any period exceeding five years, without an order of the Civil Court previously obtained.

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XIX. It shall be lawful for any relative or friend of said Minor at any time during the continuance of the minority, to sue for an account. Relative or friend may sue for an account, or from any person to whom a Certificate shall have been granted under the provisions of this Act, or from any such Manager or 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.

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

XXI. The Civil Court for any sufficient cause may recall any Certificate granted under this Act, and may direct the Collector to take charge of the estate, or may grant a Certificate to the Public Curator or any other person as the case may be, and may compel the person whose Certificate has been recalled to make over the property in his hands to his successor, and to account to such successor for all monies received and disbursed by him.

XXII. The Civil Court may impose a fine not exceeding five hundred Rupees on any person who may wilfully neglect or refuse to deliver his accounts, or any property in his hands, within the prescribed time, or at 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 consent to deliver such accounts or property.

XXIII. The Civil Court may permit any person to whom a Certificate shall have been granted under this Act not being the Public Curator, and any Guardian appointed by the Court, to resign his trust; and may give him a discharge therefrom on his accounting.

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accounting to his successor, duly appointed, for all moneys received and disbursed by him; and making over the property in his hands.

XXIV. The Public Curator and every other Administrator to whom a Certificate shall have been granted under Section X, shall be entitled to receive such commission not exceeding five per centum on the sums received and disbursed by him, or such other allowance, to be paid out of the Minor's estate, as the Civil Court shall think fit.

XXV. Every Guardian appointed by the Civil Court, or by the Collector under this Act, who shall have charge of any male Minor, shall be bound to provide for his education in a suitable manner. The general superintendence and control of the education of all such Minors shall be vested in the Civil Court, or in the Collector, as the case may be; and the provisions of Act XXVI of 1854 (for making better provision for the education of male Minors subject to the superintendence of the Court of Wards), shall so far as is consistent with the provisions herein contained, be applicable to the Civil Court, or to the Collector, as the case may be, in respect to such Minors, and to every such Guardian.

XXVI. For the purposes of this Act, every person of 18 years of age shall be held to be a Minor, who has not attained the age of eighteen years.

XXVII. Nothing in this Act shall authorize the appointment of a Guardian of the person of a female whose husband is not a Minor; or the appointment of a Guardian of the person of any Minor whose father is living and is not a Minor; and nothing in this Act shall authorize the appointment of any person other than a female as the Guardian of the person of a female. If a Guardian of the person of a Minor be appointed during the minority of the father, or husband of the Minor, the Guardianship shall cease as soon as the father or husband (as the case may be) shall attain the age of majority.

XXVIII. All orders passed by the Civil Court, or by any Subordinate Court under this Act, shall be subject to appeal under the rules in force for appeals in miscellaneous cases, from the orders of such Court and the Subordinate Courts.

XXIX. The

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as it relates to
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XXIX. The expression "Civil Court" as used in this Act shall be held to mean the principal Court of original jurisdiction in the District, and shall not include the Supreme Court; and nothing contained in this Act shall be held to affect the powers of the Supreme Court over the person or property of any Minor subject to its jurisdiction. Unless the contrary appears from the context, words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number; and words importing the masculine gender shall include females.

Construction of the Words "Civil Court" &c., Powers of Supreme Court not affected.

Number.

Gender.

Every deed, instrument or document which is or shall be contained in any book or other material, shall be deemed to be stamped, if the signature or seal of the parties and witnesses be thereon, and there is reason to believe that many deeds, instruments and documents have been executed since the said Regulation came into effect in respect of which the said Regulation has not been complied with; and it is expedient to amend the said Regulation to provide for the reception of evidence of such deeds as aforesaid, it is enacted as follows:—

I. The above Rule is hereby repealed. Part of Schedule A to Act No. 1858 of 1858.

II. Every deed, instrument or document which is or shall be contained in any book or other material, shall be deemed to be stamped, if any one or more of the parties or witnesses shall have the requisite stamp or seal upon the signature or seal of the parties and witnesses, and the said Regulation shall be amended accordingly.