

ACT No. XX OF 1864.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 24th March 1864).

*An Act for making better provision for the care of the persons and property of Minors in the Presidency of Bombay.*

WHEREAS it is expedient to make better provision for the care of the persons and property of Minors in the Presidency of Bombay; It is enacted as follows:—

Preamble.

I. The care of the persons of all Minors (not being European British subjects) and the charge of their property shall vest in the Civil Court.

Care of persons and charge of property of Minors vested in the Civil Court.

II. Every person who shall claim a right to have charge of property in trust for a Minor under a Will or Deed or other instrument in writing, 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 the property is of small value, not exceeding Rupees two hundred and fifty, 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.

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.

Proviso.

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

Who may apply to Court to appoint a person to take charge of the property, &c., of a Minor.

IV: If

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IV. 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.

To what Court application to be made if property be situate in more than one District.

V. When application shall have been made to the Civil Court either by 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 inquire summarily into the circumstances, and pass orders in the case. Provided always that it shall be competent to the Civil Court to direct any Court subordinate to it to make such inquiry and report the result.

Summary inquiry to be made by Court on application.

Proviso.

VI. If it shall appear that any person claiming a right to have charge of the property of a Minor is entitled to such right by virtue of a Will or Deed or other instrument in writing, 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 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.

Certificate of Administration to whom to be granted.

Court may appoint person having such Certificate Guardian of Minor's person.

VII. The Court may call upon the Collector or Magistrate for a report on the character and qualification of any relative or friend of the Minor, who may be desirous or willing to be entrusted with the charge of his property or person, and it shall be incumbent on the Collector or Magistrate to furnish such report after making all due inquiry.

Court may call upon Collector or Magistrate for a report on the character and qualification of relative or friend.

VIII. If no title to a Certificate be established to the satisfaction of the Court by a person claiming under a Will or Deed or other instrument in writing, and if there be no near relative willing and fit to be entrusted with the charge of the property or person of the Minor, and the Court shall think

Proceeding if no title to a Certificate be established, and if there be no relative fit to be entrusted with the charge of property, &c., of Minor.

it

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it to be necessary for the interest of the Minor that provision should be made by the Court for the charge of his property or person, the Court shall proceed to make such provision in the manner hereinafter provided.

IX. If the estate of the Minor consists of moveable property or of houses, gardens, or the like, the Court shall grant a Certificate to the Public Curator appointed under Section XIX, Act XIX of 1841 (*for the protection of moveable and immoveable property against wrongful possession in cases of successions*), or if there be no Public Curator to any fit person whom the Court may select for the purpose.

If estate consists of moveable property, &c., Court may grant Certificate to Public Curator or other person.

X. Whenever the Court shall grant a Certificate of Administration to the estate of a Minor 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, or the legal heir of the Minor, or next in succession to the property, may be appointed Guardian. Provided that in the case of Minors who have inherited property by adoption, the natural father 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, surviving parent whether natural or adoptive, husband, wife and children, if any, 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.

Appointment of Guardian

Guardian's allowance.

Allowance for maintenance of Minor &c.

XI. 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 of the District in which the larger part of the same may be situated to take charge of the estate.

When the estate consists of land, Court may direct Collector to take charge of estate.

XII. The Civil Court may take such security as it shall think necessary, from any person to whom it may grant a Certificate of Administration of the property of any Minor under

Court may take security.

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under this Act. Provided always, that no such security shall be demanded from the Collector of a District or the Public Curator, when their services may be availed of.

Proviso.

XIII. In all inquiries and other proceedings held or had 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 such inquiry was made or proceeding had, or out of the estate of the Minor, or otherwise, as it may think proper.

Cost of inquiries under this Act.

XIV. Whenever one or more of the proprietors of an estate which has been placed under the Collector's charge shall have passed his or their minority, the Collector shall represent the fact to the Civil Court, and the Court, unless it see sufficient reason to the contrary, may direct the Collector to retain charge of the shares of the property of the still disqualified proprietors during the continuance of their disqualification, or until it shall be otherwise ordered by the Court; or the Court may direct the whole estate to be made over to the management of the proprietor or proprietors who shall have become of age, with such directions as to the share or shares of the still disqualified proprietor or proprietors as to the Court shall seem fit and proper.

Course to be followed when one or more of the proprietors of an estate placed under Collector's charge may come of age.

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.

Proceedings of Collector subject to control of superior Revenue Authorities.

XVI. The Public Curator and every other Administrator to whom a Certificate shall have been granted under Section X shall, within six months from the date of the Certificate, deliver in Court an inventory of all the immoveable 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 first of May of the Christian era an account of the property in his charge, exhibiting the amounts received, disbursed, and invested 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,

Proceeding if accuracy of inventory or account be impugned.

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Administrator, and inquire 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 for investigation and report.

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 by him be invested on account of the estate, from time to time, in the Public Securities.

Surplus funds to be invested by Public Curator, &c., in Public Securities on account of estate.

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, alienate, mortgage, or otherwise incumber any immoveable property, or to grant a lease thereof for any period exceeding five years, without the sanction of the Civil Court previously obtained.

Powers of person to whom Certificate has been granted in the management of Minor's estate.

XIX. It shall be lawful for any relative or friend of a Minor at any time during the continuance of the minority to sue for an account from any Manager appointed under this Act, 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.

Relative or friend may sue for an account.

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.

Continuance of suit instituted under this Act after disqualification shall have ceased.

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 fresh Certificate to the Public Curator or any other person as the case may be, and

Revocation of Certificate.

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and may compel the person whose Certificate has been recalled to make over  
the property in his hands to his successor, and  
Removal of Guardian. account to such successor for all moneys received  
and disbursed by him. The Court may also for any sufficient cause remove  
any Guardian appointed by the Court.

XXII. The Civil Court may impose a fine not exceeding five hundred  
Rupees on any person who may wilfully neglect  
Penalty for neglect or refusal to de-  
liver accounts or property. or refuse 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 confinement in the Civil Jail 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  
Civil Court may permit resignation  
of trust, &c. the Public Curator, and any Guardian appointed by  
the Court, to resign his trust, and may give him a discharge therefrom on his  
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  
Remuneration of Public Curator, &c. 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 under this Act  
who shall have charge of any male Minor shall be  
Guardian of Minors under this Act  
to provide for their education. 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.

XXVI. In the exercise of this superintendence and control, it shall be  
lawful for the Civil Court to direct that such  
Civil Court may fix the residence  
and place of education of Minor. Minor shall reside either with or without his  
Guardian at the Sudder Station of the District, or at any other place within  
the Presidency of Bombay, and shall attend for the purposes of education  
such

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such School or College as to the said Civil Court may seem expedient, and to make such provision as may be necessary for the proper care and suitable maintenance of the said Minor whilst attending such School or College.

XXVII. If it shall appear to the Civil Court inexpedient to place any such Minor at School or College, it shall, if the proceeds of the estate are sufficient for that purpose, cause such Minor to be educated by a private tutor properly qualified, either at the family residence of such Minor or at the Sudder Station, or elsewhere within the Presidency of Bombay, and in that case also the Civil Court shall have power to determine, from time to time, the place of residence of such Minor, and to make such provision as may be necessary for his proper tuition and maintenance during the period of his education.

XXVIII. All charges and expenses which may be incurred on account of any male Minor under the provisions of this Act, for College or School fees, or for other charges of tuition or education, or by reason of his residence in any place other than his own home or otherwise, shall be defrayed from the profits of his estate in the same manner as other expenses incurred under the authority or with the sanction of the Civil Court.

XXIX. Every Guardian appointed under this Act who shall have charge of an unmarried Minor, shall pay all the necessary expenses of the marriage of such Minor out of the estate; provided that these expenses shall in no case, without the sanction of the Civil Court, involve the Minor's estate in debt.

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

XXXI. 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 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 husband of the Minor, the Guardianship shall cease as soon as the husband shall attain the age of majority.

XXXII. Nothing

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XXXII. Nothing in this Act shall be held to interfere with the provisions of Act XXXV of 1858 (*for making better provision for the care of the Estates of Lunatics*).  
Act not to interfere with Act XXXV of 1858.

XXXIII. All orders passed by the Civil Court under this Act shall be open to appeal to the High Court at Bombay, and shall be subject to all the provisions contained in Section 366 of the Code of Civil Procedure.  
Orders of the Civil Court open to appeal.

XXXIV. The expression "Civil Court" as used in this Act shall be held to mean the principal Court of original Civil jurisdiction in the District, and shall not include the High Court of Judicature; and nothing contained in this Act shall be held to affect the powers of the High Court of Judicature 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 words "Civil Court."  
Powers of High Court not to be affected.  
Number.  
Gender.