

The Court of Wards Act, 1879

[Bengal Act IX of 1879]

An Act to amend the law relating to the Court of Wards

[30th July, 1879]

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Preamble.—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 Bengal. It is enacted as follows:—

PART I

Preliminary

1. Short title.—This Act may be called the Court of Wards Act, 1879.

Extent.—¹[It extends to the [States]² of West Bengal, Bihar and Assam and that part of the [State]² of Orissa which on the 30th day of July, 1879, was subject to the Lieutenant-Governor of Bengal.]

1. Subs. for the original paragraph by the Indian Independence (Adaptation of Bengal Punjab Acts) Order, 1948.

2. Subs. by the Adaptation of Laws Order.

[Repealed by Act 5 of 1897.]

2. Repeal and savings.—Bengal Act IV of 1870 (the Court of Wards Act), Section 11 of Act 35 of 1858¹, Sections 12, 14 and 15 of Act 40 of 1858² and so much of Section 21 of Act 40 of 1858² and provides that the Civil Court may direct the Collector to take charge of an estate, are hereby repealed.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 35 of 1858¹, or under Section 12, Section 14 or Section 21 of Act 40 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.

And all orders and appointments made by Collectors under Act 35 of 1858, and/or Act 40 of 1858 now in force, shall (so far as they are consistent with this Act) be deemed to be made under this Act.

[Repealed. by Act 1 of 1903.]

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

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

"the Court" means the Court of Wards;

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 revenue³ [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 [and the tenure of any *patnidar* and any other permanent tenure]³;

"minor" means a persons who has not completed his age of twenty-one years;

["proprietor" means a person owning an estate;]⁴

"section" means a section of this Act;

⁴[the words 'trust', 'trustee', author of the 'trust', 'beneficiary', 'trust property', 'trust money', 'beneficial interest', 'interest of the beneficiary', instrument of trust'

1. Rep and re-enacted by the Indian Lunacy Act, 1912.

2. Act 40 of 1858 was repealed by the Guardian and Wards Act, 1890.

3. Added by Sec. 3 of Act 4 of 1892.

4. Ins by Bihar Act 4 of 1940.

and 'breach of trust' have the same meanings as are assigned to them by the Indian Trust Act, 1882;]

["ward" means any person who is under the charge of the Court of Wards or whose property is under such charge, or a trustee or any joint trustees, the property in the charge of whom as trustees, has been taken over by the Court of Wards under the provisions of this Act.]¹

4. Saving of Act 34 of 1858 and of jurisdiction of High Court as respects infants.—Nothing contained in this Act shall affect any of the provisions of Act 34 of 1858 or the jurisdiction, as respects infants, of any High Court of Judicature.

PART II

Constitution, Jurisdiction and Powers of the Court of Wards

5. Constitution and general duties of the Court of Wards.—The Board of Revenue² shall be the Court of Wards for the [State]³ of Bihar.

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.

4[5-A. Previous approval of State Government in certain matters.—(1) The authority vested in the Court shall be subject to the previous approval of the [State]³ Government in the following matters:

- (a) the assumption of charge of the property of a proprietor;
- (b) the creation of, and the appointment of any person to, any post, the salary of which exceeds Rs. 200 a month;
- (c) in the case of all estates,—
 - (i) the estimates of revenue and expenditure for the first year after the Court assumes charge;
 - (ii) expenditure on all exceptional items exceeding Rs. 1,000;
- (d) in the case of estates, the aggregate of the rent and cess demand of which exceeds one lakh of rupees, the estimates of revenue and expenditure for each year;
- (e) in the case of estates, the aggregate of the rent and cess demand of which is one lakh of rupees or less, all new items involving recurring expenditure;
- (f) every proposal for the sale or purchase of property at a price exceeding Rs. 10,000;
- (g) every proposal for taking a loan exceeding Rs. 20,000;
- (h) every proposal for the delegation of the powers of the Court to any officer or authority; and

- (i) every proposal for the residence or education of a minor or a female ward outside the [State]¹ of Bihar.

(2) Clauses (a) to (h) of sub-section (1) shall apply to trustees and to trust estates and property in the same manner as they apply to proprietors and to estates and property of proprietors.

5-B. Court of Wards Advisory Committee.—(1) There shall be constituted a committee to be called the Court of Wards Advisory Committee which shall consist of three members, of whom—

- (a) one shall be a person elected by the member of the Bihar Legislative Assembly representing the Landlords' Constituencies of the said Assembly and the member of the Legislative Assembly representing the Bihar and Orissa Landholders' constituency of the Legislative Assembly;
- (b) one shall be a person elected by the Bihar Landholders' Association; and
- (c) one shall be a servant of the [Government]², not below the rank of District Judge, nominated by the [State]¹ Government by notification.

(2) The members referred to in clauses (a) and (b) of sub-section (1) shall be elected in accordance with rules made under this Act, and shall hold office for one year from the date on which their election is published in the Official Gazette, and the member nominated under clause (c) of the said sub-section shall hold office for such period as may be specified in the notification nominating him.

(3) If either of the electorates mentioned in clauses (a) and (b) of sub-section (1) fails to elect a person within the time fixed by rules made under this Act, the [State]¹ Government may require such electorate to elect a person within the time fixed by rules made under this Act, and if such electorate fails, on being so required, to elect a person, the [State]¹ Government shall nominate a person, to be a member under clause (a) or clause (b), as the case may be. A person nominated to be a member under this sub-section shall hold office for one year from the date of the order nominating him.

(4) The [State]¹ Government shall publish the names of the members elected under clauses (a) and (b) of sub-section (1) in the Official Gazette.]

3[6. Power of the Court to take charge of property of certain persons.—(1) The Court shall have power to take charge of the property of the following proprietors or trustees—

- (a) female proprietors declared by the Court incompetent to manage their own property;
- (b) proprietors declared by the Court to be minors;
- (c) proprietors adjudged by a competent Civil Court to be of unsound mind and incapable of managing their affairs;
- (d) proprietors who apply to the Court to have all their immovable property and such part of their movable property as they may specify placed

1. Subs. by Bihar Act 4 of 1940.

2. For the constitution and powers of the Board of Revenue, See the Bihar and Orissa Board of Revenue Act, 1913.

3. Subs. by the Adaptation of Laws Order.

4. Ins. by Sec. 4 of Bihar Act 4 of 1940.

1. Subs. by the Adaptation of Laws Order.

2. Subs. by *ibid* for "provincial".

3. Subs. by Sec. 5 of Bihar Act 4 of 1940.

under the management of the Court, if the Court, on being satisfied that it is expedient in the public interest that such property should be managed under the direction and control of the Court, directs that such property be so managed;

- (e) trustees who apply, in the manner hereinafter mentioned, to the [State]¹ Government to have property which they hold in trust placed under the management of the Court of Wards, if the [State]¹ Government on being satisfied that it is expedient in the public interest that such property should be managed under the direction and control of the Court, directs that such property be so managed;
- (f) proprietors declared by the [State]¹ Government to be incapable of managing or unfitted to manage their own property owing to any physical or mental defect or infirmity unfitting them for the management of their own property; and
- (g) proprietors declared by the [State]¹ Government to be incapable of managing or unfitted to manage their own property—
 - (i) owing to their having entered upon a course of extravagance, or
 - (ii) owing to their failure without sufficient reason to discharge debts and liabilities due by them:

Provided that no declaration shall be made—

- (i) under clause (g) in respect of any proprietor, except on an application made to the [State]¹ Government by a relation of such proprietor;

Explanation.—For the purposes of this proviso the word 'relation' shall mean a coparcener in a joint Hindu family governed by the Mitakshara or Mithila law or an heir or any person having a reversionary interest in the property of such proprietor.

- (ii) under clause (f), unless the case of any such proprietor under clause (g) unless the application aforesaid, has been referred by the [State]¹ Government to the Court of Wards Advisory Committee and the Committee, after such inquiry as it thinks fit, recommends, within such period as the [State]¹ Government may fix, that it is expedient that the Court should take charge of the property of such proprietor;
- (iii) under sub-clause (i) of clause (g), unless the [State]¹ Government is satisfied that such extravagance is likely to lead to the dissipation of the property;
- (iv) under sub-clause (ii) of clause (g), unless the [State]¹ Government is satisfied that the failure to discharge such debts and liabilities is likely to prejudice the interests of the property of such proprietor.

(2) No declaration under clause (f) or (g) of sub-section (1) shall be made until the proprietor has been furnished with a detailed statement of the grounds on which it is proposed to take charge of his property and has had an opportunity of showing cause why such declaration should not be made.]

1. Subs. by the Adaptation of Laws Order.

¹[6-A. Finality of order of State Government, in case of certain disputes.—If the right of the Court of Wards to assume or retain charge of the property of any proprietor mentioned in clauses (a), (b), (c), (f) or (g) of sub-section (1) of Section 6 is disputed by such proprietor, or, if he be a minor or of unsound mind, by some person on his behalf, the case shall be reported to the [State]² Government whose orders thereon shall be final and shall not be questioned in any Civil Court.

6-B. Assumption of charge under direction of State Government.—Notwithstanding anything contained in proviso (ii) to clauses (f) and (g) of sub-section (1) of Section 6, the [State]² Government may, at any time within six months from the date on which this Act comes into force, or until the constitution of the first Court of Wards Advisory Committee under Section 5-B, whichever is earlier, direct that the property of any proprietor referred to in clause (f) or (g) of sub-section (1) of Section 6 shall be placed under the management of the Court from a date to be specified in the order, and such property shall thereupon be managed by the Court as if a declaration had been made by the [State]² Government in respect of such property under Section 6.

6-C. Application in respect of property held in trust.—(1) The application referred to in clause (e) of sub-section (1) of Section 6 shall be made if the property is already held in trust, then by the person acting in the administration of the trust, or, where there are more persons than one so acting; then by those persons or a majority of them.

(2) For the purposes of this Section, the executor or administrator of a deceased trustee of property held in trust shall be deemed to be a person acting in the administration of the trust.

6-D. Certain applications to be rejected only under direction of State Government.—Notwithstanding anything to the contrary contained in this Act, no application made under any of the provisions of this Act, for having any property placed under the management of the Court shall be rejected under the direction of the [State]² Government.]

³[7. Power of the Court to take charge of the property or person of wards.—When the Court takes charge under Section 6 of the property of a sole proprietor, or of all joint proprietors, or of the trust property of a sole trustee or of all joint trustees, the Court shall have power to take charge of—

- (a) all the property of any sole proprietor or joint proprietors as are mentioned in clauses (a), (b), (c), (f) or (g) of sub-section (1) of Section 6;
- (b) such part, as the [State]² Government thinks fit, of the immovable property, and so much of the movable property as may be specified in the application, of a proprietor mentioned in clause (d) of sub-section (1) of Section 6;

1. Sections 6-A to 6-D ins. by Sec. 6 of Bihar Act 4 of 1940.

2. Subs. by the Adaptation of Laws Order.

3. Subs. by Sec. 7 of Bihar Act 4 of 1940.

- (c) all the property held by such sole trustee or by such joint trustees, and mentioned in the application made under clause (e) of sub-section (1) of Section 6;
- (d) the person of any proprietor referred to in clauses (a), (b), (c) or (f) of sub-section (1) of Section 6 who is resident within its jurisdiction;
- (e) the property and the person of any minor member of the family of any proprietor referred to in clauses (a), (b), (c) or (f) of sub-section (1) of Section 6 who is resident within its jurisdiction and has an immediate or reversionary interest in the property of any such proprietor; and
- (f) the property of any minor member of the family of any proprietor referred to in clause (g) of sub-section (1) of Section 6, who is resident within its jurisdiction and has an immediate or reversionary interest in the property of such proprietor.]

¹[7-A. Powers of manager in relation to trust property.]—Subject to the provisions of this Act, when the Court has taken charge of the trust property of a trustee then, notwithstanding anything contained in the Indian Trust Act, 1882, or any other law relating to trusts, the manager or any officer authorised in this behalf by the Court shall, subject to the direction and control of the Court exercise such powers and perform such duties in respect of such property as could have been exercised and performed by the trustee.

No proceedings shall be taken in any Civil, Criminal or Revenue Court against a trustee, the trust property held by whom has been taken under the charge of the Court, on the ground that the rights and obligations of a trustee are not exercised or performed by him or that the trust property has been placed under the management of the Court.

7-B. Trustees not competent to transfer or charge trust property under superintendence of the Court.—When the Court takes charge of the trust property of any trustee, such trustee shall not be entitled to manage the trust property and shall not be competent to transfer, or create any charge on, or interest in, any part of the trust property, or to enter into any contract which may involve the trust property in any pecuniary liability.

7-C. Court not to take charge of property of trust for religious purpose.—Nothing contained in the foregoing Sections or in any of the other provisions of this Act shall be deemed to authorise the Court to take charge of any property of a trust for a religious purpose, or any trust which involves the management of any public temple, mosque, or other religious establishment or a trust to which the Religious Endowments Act, 1863, or any other enactment relating to provision for superintendence and control of religious endowments, applies.

Explanation.—A trust is not a trust for a religious purpose merely because it provides for the making of periodical payments to any mosque, temple or any other religious establishment, or provides for the maintenance of a private temple of the author of the trust, meant for religious worship of the author of the trust and of his family.

1. Sections 7-A to 7-E ins. by Sec. 8 of Bihar Act 4 of 1940.

7-D. Court not to take charge of trust property to which English law is applicable.—Nothing contained in any of the foregoing Sections or any of the other provisions of this Act shall be deemed to authorise the Court to take charge of property of a trust to which English law is applicable.

7-E. Certain Acts not to apply to trust property of which Court takes charge.—Nothing in the Indian Trusts Act, 1882, the Official Trustees Act, 1913, the Charitable Endowments Act, 1890 or the Charitable and Religious Trusts Act, 1920 shall apply to any trust property of which charge has been taken by the Court of Wards as the trustees of such trust of property.

8. Court when bound to give up charge.—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.

9. Discretion of Court as to taking and keeping charge.—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 [* *]¹ 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, it taken;
- (d) at any time resume such charge, after having withdrawn from it.

[Added by Act 4 of 1892 and repealed by Bengal Act 1 of 1906].

²[9-A. Power of State Government to order release of property in certain cases.]—The [State]³ Government may, by notification, direct that the Court shall, from a date to be specified in such notification, withdraw from charge—

- (a) of any property of which charge has been taken under clause (d) or clause (e) of sub-section (1) of Section 6, on application made by the proprietor or trustee of such property, as the case may be, requesting that such property shall be released from the charge of the Court;
- (b) of any property of which charge has been taken under clause (f) or (g) of sub-section (1) of Section 6, if the [State]³ Government is satisfied that the circumstances owing to which the declaration in respect of such property was made no longer exist;
- (c) of any property of which charge was taken on the application of a proprietor before the Court of Wards (Amendment) Act, 1939, came into force⁴, on application made by such proprietor, if the [State]³ Government is satisfied that it is no longer expedient in the public interest that the Court should retain charge of such property:

Provided that no application under clauses (a), (b) or (c) shall be entertained if it is made earlier than seven years after the date on which charge was taken of the property.]

1. Word "disqualified" Omit by Sec. 9 of Bihar Act 4 of 1940.

2. Ins. by Sec. 10 of Bihar Act 4 of 1940.

3. Subs. by the Adaptation of Laws Order.

4. The Courts of Wards (Amendment) Act, 1939 came into force on 28th June, 1940.

10. Application by Civil Court to Court of Wards to take charge.—

¹[Whenever a Civil Court is satisfied that an order should be made under Section 7 of the Guardians and Wards Act, 1890, appointing 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,]

or whenever a person has been adjudged, under Act 35 of 1858², to be of unsound mind and incapable of managing his affairs, if the property of such minor or [* *]³ 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 [* *]³ proprietor; and it shall be at the discretion of the Court of Wards to take charge of such person or property, or to refuse to do so.

Nothing contained in Sections 12 to 19 (both inclusive) of Act 35 of 1858² shall be held to apply to persons or properties under the charge of the Court of Wards.

⁴[**10-A. Notice to creditors.**—(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 6-4A, a notice calling upon all creditors having claims against the ward or 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.

(2) Every such claim (other than a claim on the part of ⁵[the Government], not submitted to the Court in compliance with the provisions of sub-section (1), shall save in the case provided for by Section 10-E, sub-section (2), clause (c), notwithstanding any law, contract, decree or award to the contrary, cease to carry interest from the date of the expiry of the period aforesaid:

Provided that if the Court is satisfied that 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.

10-B. Creditors to furnish full particulars and documents.—(1) Every creditor submitting his claim in compliance with the provisions of Section 10-A, sub-section (1), shall furnish, alongwith 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 claim, together with a true copy of every such document.

(2) The Court shall, after marking, for the purpose of identification, every

1. Subs. by Section 6 of Act 4 of 1892, for the original clauses.
2. Act 35 of 1858 repealed and re-enacted by the Indian Lunacy Act, 1912 and this reference be construed as a reference to the latter Act, *vide* Section 8 of General Clause Act, 1897.
3. Word "disqualified" omitted by Sec. 11 of Bihar Act 4 of 1940.
4. Sections 10-A to 10-E ins. by Bengal Act 1 of 1906.
5. Subs. by the Adaptation of Laws Order for "the Crown".

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.

10-C. Stay of proceedings of Civil Courts.—If a Civil Court has directed any process of execution to issue against any immovable property of a ward, or the rents thereof, or any crops standing thereon, the Court of Wards may, at any time within one year after it assumes charge of such property, apply to the Civil Court to stay proceedings in the matter of such process; and the Civil Court may, on such terms regarding interest or compensation for delay as may appear to it to be just and reasonable, stay such proceedings for such period as it may deem fit.

10-D. Adjudication of claims.—(1) On receipt of all claims submitted in compliance with provisions of Sections 10-A and 10-B 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:

Provided that if, when the superintendence of the property by the Court is relinquished or otherwise terminates, any portion of the claim reduced as aforesaid is still unsatisfied, the creditor shall be entitled to recover a sum bearing the same proportion to the original claim admitted under sub-section (1) as the unsatisfied portion bears to the reduced claim.

(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.

10-E. Relinquishment of inextricably involved estates.—(1) The Court of Wards may after making an investigation under Section 10-D, when it appears to the Court that [any estate or trust property of which it has taken charge]¹ is

1. Subs. by Sec. 12(a) of Bihar Act 4 of 1940.

involved beyond all hope of extrication for any other sufficient reason, by notice published in the manner provided in Section 64-A, declare that it will, on a date to be fixed by the notice, relinquish charge of the property and person (or of the property, as the case may be) of the ward under this section.

(2) On the date so fixed,—

- (a) such charge shall terminate;
- (b) the owner of the said property [or the trustee of such trust property]¹ shall be restored to the possession thereof, subject to any contracts entered into by the Court of Wards for the preservation or benefit of such property; and
- (c) the claims for interest barred under Section 10-A, sub-section (2) shall revive in case the debt or liability in respect of which the interest is claimed be not then barred by any law of limitation.

(3) In calculating the periods of limitation applicable to suits to recover claims for interest relieved under this section the time during which such charge has continued shall be excluded.]

²[11. Procedure when any of joint proprietors ceases to be subject to the jurisdiction of the Court.]—Whenever one or more of any joint proprietors of whose property the Court has taken charge under clauses (a), (b) or (c) of sub-section (1) of Section 6, cease to be subject to the jurisdiction of the Court, the Court may retain charge of the persons and property of the other joint proprietors who continue to be subject to the jurisdiction of the Court.

And, in case any person entitled to any property jointly with any joint proprietors who continue to be subject to the jurisdiction of the Court shall consent thereto, the Court may retain or resume charge of the property of such joint proprietor or any part thereof, so long as the property of such joint proprietor as aforesaid remains in charge of the Court.]

12. Withdrawal from charge by Court.—The Court of Wards may at any time withdraw from the charge of any person and property taken under Section 10 or under Section 11, and from the charge of any person or property ³[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 40 of 1858⁴, or under Section 11 of Act 35 of 1858⁵ [or under any other enactment for the time being in force]⁶:

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 of Wards shall so withdraw.

13. Procedure when succession to property of ward disputed.—Whenever, on the death of any ward, the succession to his property or any part

1. Ins. by Sec. 12(b) Bihar Act 4 of 1940.

2. Subs. by Sec. 13 of *ibid*.

3. Subs. by Sec. 8 of Act 4 of 1892.

4. Rep. by Act 8 of 1890.

5. Act 35 of 1858 rep. by the Indian Lunacy Act, 1912.

6. Added by Act 4 of 1892.

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 7 of 1876, or until the dispute has been determined by a competent Civil Court.

¹[13-A. Power of Court to retain charge of property of ward until discharge of debts.]—If, when [any ward other than a trustee, dies, or ceases to be subject to the jurisdiction of the Court]², there remain undischarged debts or liabilities which were incurred by, or are due from, [such ward]², or which are a charge upon his property or any part thereof.

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 ward]², 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.]

³[13-B. Action to be taken by the Court on the death of trustee.]—When the Court has taken charge of any trust property and the sole trustee or one of several joint trustees of such trust property dies, the Court shall,—

- (a) if there is no dispute as to the succession to the office of the deceased trustee, retain charge of the trust property until the successor of the sole trustee or a majority of the joint trustees request the Court to release the trust property from its charge;
- (b) if there is a dispute as to the succession to the office of the deceased trustee, retain charge of the property until the dispute has been determined by a competent Civil Court and the sole trustee or a majority of the trustees who, in accordance with the decision of such Court, are entitled to succeed to the office of the deceased trustee request the Court to release the trust property from its charge.]

14. General powers of Court.—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 ³[other than trust 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 competent to contract]², 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. Exercise through others of powers conferred on Court.—The Court may exercise all or any powers conferred on it by this Act through the Commissioners

1. Ins. by Sec. 4 of Bengal Act 1 of 1906.

2. Subs. by Act 4 of 1940.

3. Ins. by *ibid*.

of the Divisions and the Collectors of the districts in which any part of the property of ¹[a ward] may be situated, or through, any other person whom it may appoint for such purpose.

Delegation of powers.—The Court may ²[* * *] from time to time delegate any of its powers to such Commissioners or Collectors or other person as aforesaid, and may at any time ²[* * *] revoke such delegation.

³**16. Establishments and expenses.**—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 the 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. [* * *]⁴

18. Power to manage property.—The Court may sanction the giving of leases or farms of the whole or part of any property [other than trust property]⁵ 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 to be most for the benefit of the property and the advantage of the ward.

19. When Court may order property to be formed into separate estate.—If the Court thinks it expedient to direct the sale or mortgage of any part of an estate [liable to the payment of land revenue]⁵ 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 ⁶[State] Government, may direct.

⁵[Nothing in this Section shall apply to any trust property of which the Court has taken charge under clause (e) of sub-section (1) of Section 6.]

20. Appointment of managers and guardians.—The Court may appoint one or more managers for 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.

⁷[When any person, other than a proprietor of whose property the Court has taken charge under clause (d) of sub-section (1) of Section 6 or a trustee of whose trust property the Court has taken charge under clause (e) of the said sub-section,

1. Subs. by Sec. 17 of Bihar Act 4 of 1940.

2. Omit. by Section 2 and Schedule, Part II of B. & O. Act 3 of 1916.

3. Subs. by Bengal Act 3 of 1881.

4. Section 17 repealed by Sec. 9 of Act 10 of 1892.

5. Ins. by Sec. 19(a) of Bihar Act 4 of 1940.

6. Subs. by the Adaptation of Laws Order.

7. Subs. by Sec. 20 of Bihar Act 4 of 1940.

becomes a ward, the Court may, as its discretion, confirm or refuse to recognise any appointment of a person to be the guardian of such ward which may have been made by a will.]

21. Custody, education and residence of Wards.—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.

22. Allowance for ward and his family.—The Court shall allow, for the support of each ward [other than a trustee] and of his family, such monthly sum as it thinks fit (if any) with regard to the rank and circumstances of the parties.

PART III

Protection from Sale of certain Estates

23. Estate under charge of court exempt from sale.—*Clause 1.*—Except as hereinafter provided by Section 23-A, every estate, and subject to the provisions of Section 14 of Act 11 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 7 of 1876, shall be exempted from sale for arrears of Government revenue which 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 due at time when estate ceases to be under charge of Court.—*Clause 2.*—If at the time when such estate, share or part ceases to be under the charge of the Court of Wards, an arrear of revenue is due on account thereof, the Collector may attach such estate, share or part and collect the rent, cesses and other demands due, and all arrears thereof, managing such estate, share or part either directly or through a manager, or by farming it for a period not exceeding five years, as he may think fit:

Provided that, when such estate, share or part has been attached under the provisions of this clause, the proceeds shall be paid to the Collector; and the Collector, after deducting the claims of Government for revenue and other public demands, together with any interest which has accrued upon such public demands other than Government revenue, and the charges of management due up to the date of making such deduction, shall release such estate, share or part from attachment, and pay any balance of the proceeds still remaining in his hands to the proprietor of such estate, share or part or to his duly constituted agent, and shall furnish such proprietor or agent with an account of the receipts and expenditure extending over the time when such estate, share or part was under attachment.

23-A. Conditions under which estate may be sold for arrears of revenue accrued under Court.—Notwithstanding anything, in clause 5, Section 8, Regulation 1 of 1793, 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 provisions of the law for the time being in force for the recovery of arrears of Government revenue, if the Court has certified in writing that the interest of the ward requires 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. Restriction on sale for arrears of revenue of estate belonging to minor.—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 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.

Power of Collector to attach such estate.—The Collector may, on an arrear so accruing on any such estate, attach the estate and collect the rent 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.

25. Section 24 not to apply unless notice given.—The exemption from sale for arrears of revenue given by Section 24 shall only apply to cases in which a written notice of that 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. Application of proceeds of estate farmed under Section 24.—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 Government for revenue and other public demands, and the charges of management, shall, either pay the proceeds to the person authorized to receive them for the proprietor, or shall dispose of them in any of the modes mentioned in Section 49 or in Section 50.

PART IV

Ascertainment of Disqualification

¹[27. Enquiry and report by Collector.—Whenever any Collector has reason to believe that charge should be taken by the Court under clause (a) or (b) of sub-section (1) of Section 6 of the property of any person residing in his district or of the property of any proprietor of an estate lying wholly or partly within his district he shall make such enquiries as he may deem necessary and if satisfied that charge should be taken he shall make a report accordingly 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].

28. Power to enforce provisions of Act without report.—Nothing in Section 27 shall prevent the Court or the [State]² Government from putting the provisions of this Act in force without any report from the Collector.

1. Subs. by Bihar Act 4 of 1940.

2. Subs. by the Adaptation of Laws Order.

29. Powers of Collector as to preservation of property on death of a proprietor whose heirs should be declared disqualified.—Whenever any Collector receives information that the sole proprietor of an estate [situated in]¹ 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 Court should take charge of the property of the heirs of such proprietor under clauses (a), (b), or (c) of sub-section (1) of Section 6]¹, 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 of 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 7 of 1868, or any similar law¹ for the time being in force.

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

31. Application to Civil Court in case of lunatics.—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 of unsound mind and incapable of managing 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 provisions of Act 35 of 1858², to the Civil Court of the district within the jurisdiction of which such proprietor may reside.

32. to 33. [Repealed by Act 4 of 1940].

34. [Section 34 repealed by ALO].

³[34-A. Recovery of expenses incurred by Collector under Sections 31 to 33.—All expenses incurred by a Collector in taking action under Section 31,

1. See Bihar and Orissa Public Demands Recovery Act, 1914 (4 of 1914)

2. Act 35 of 1858 repealed and re-enacted by Act 4 of 1912 and reference now be construed as reference to the latter Act, vide Section 8, General Clauses Act, 1897.

3. Ins. by Bengal Act 1 of 1906.

[* *]¹ 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 Public Demands Recovery Act, 1895² for the recovery of public demands.]

PART V

Procedure after ascertainment of disqualification

35. Order declaring person or property to be under charge of Court.—

Whenever the Court has determined to take the person or property of a [* *]³ proprietor under its charge, whether in accordance 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.

36. Collector to take possession of movable property.—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 authorized 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 in any room, box or receptacle within any house is in the actual possession of the ward, break open the same for the purpose of searching for such account, paper or property.

37. Additional powers of Collector.—Any such Collector may also order all the persons in the employ of the ward, or all persons who were in the employ of the deceased proprietor from whom the ward has derived his property, to attend before him;

and may order any persons to deliver up any accounts, papers or moveable property belonging to the ward, or any accounts or papers relating to the ward's property, which the Collector has reason to believe are in such person's possession.

and may order all holders of tenures and under-tenures on such property to produce their title to such tenures and under-tenures.

PART VI

Management and Guardianship

38. Collector when to be deemed manager.—If no manager of the property of a ward is appointed by the Court, the Collector of the district in which the greater part of such property is situated or any other Collector whom the Court may appoint in that behalf, shall be competent to do, under the orders of the Court, anything that might be lawfully done by the manager of such property.

39. Powers of manager.—Every manager appointed by the Court shall have power to manage all property which may be committed to his charge, to

collect the rents of the land entrusted to him as well as all other moneys due to the ward, and to grant receipts therefor;

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. General duties of manager.—Every manager shall manage the property committed to him diligently and faithfully for the benefit of the proprietor, and shall, in every respect, act to the best of his judgment for the ward's interest as if the property were his own.

41. Specific duties of manager.—Every manager appointed by the Court shall—

- (a) have the care of so much of the property of the ward as the Court may direct;
- (b) give such security (if any) as the Court thinks fit, to the Collector, duly to account for all such property and for what he shall receive in respect of such property;
- (c) continue liable to account to the Court, after he has ceased to be manager, for his receipts and disbursements during the period of his management;
- (d) pass his accounts at such periods and in such forms as the Court may direct;
- (e) pay the balance due from him thereon;
- (f) apply for the sanction of the Court to any act which may involve the property in expense not previously sanctioned by such Court;
- (g) sign all papers, deeds, documents and writings which may be executed by him by virtue of his office;
- (h) be entitled to such allowance, to be paid out of the property, as the Court may think fit, for his care and pains in the execution of his duties;
- (i) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

42. General duties of guardian.—A guardian appointed to the care of a ward shall be charged with the custody of the ward, and must look to his maintenance, health and, if he be a minor, to his education.

43. Specific duties of guardian.—Every guardian appointed by the Court shall—

- (a) give such security (if any) as the Court thinks fit, to the Collector for 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 to the Court, 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;

1. Repealed by the Adaptation of Laws Order.

2. See Bihar and Orissa Public Demands Recovery Act, 1914 (4 of 1914)

3. Omitted by Sec. 25 of Bihar Act 4 of 1940.

- (f) be entitled to such allowance, to be paid out of the property of the ward, as the court may think fit, for his care and pains in the execution of the duties.

44. Exclusion of certain interested persons from guardianship.—No person who would be the next legal heir of a ward, or would otherwise be immediately interested in outliving a ward, shall be appointed to be his guardian;

But nothing in this section shall apply to the mother of a ward or to a testamentary guardian.

45. Who to be guardian of female ward.—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.

But no guardian shall ordinarily be appointed or continued for a female ward if she has an adult husband.

46. Recovery of sums due to the Court.—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 7 of 1868 or any similar law¹ for the time being in force.

47. Court may order guardian or manager to make over property.—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.

²**[48. Application of moneys received by manager.**—All moneys received by the manager [of the estate of a proprietor]³ 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.

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

CLASS I

The payment of all charges necessary for the maintenance, education and religious observances of the ward and his family;

for the management and supervision of the property of the ward;

and 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

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,

1. See Bihar and Orissa Public Demands Recovery Act, 1914 (4 of 1914).
2. Subs. by Bengal Act 3 of 1881.
3. Ins. by Sec. 26 of Bihar Act 4 of 1940.

the liquidation of debts payable by the ward,
the payment of all expenses which may be necessary to protect the interests of the ward in the Civil Courts or otherwise,
the maintenance in an efficient condition of the estates, buildings and other immovable property belonging to the ward, and
the payment of such religious, charitable and other allowances as were 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 as the Court may authorize to be paid.

CLASS III

The improvement of the land and property of the ward and the benefit of the ward and his property generally:

¹[*****]

²**[49. Disposal of surplus moneys.**—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, or under the second clause of Section 11]³, no part of the surplus mentioned in the proviso to⁴ the section immediately preceeding shall be expended by the Court otherwise than in the liquidation of debts or in the improvement of the lands or property as aforesaid.

Any portion of such surplus remaining, after provision has been made for such purposes 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 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.

50. Power to invest surplus.—If the ward is not a female or ²[male] as aforesaid, and if any surplus remains after providing, so far as the Court may think fit, for the objects mentioned in ²[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 [Central Government or the Government of]⁵ United Kingdom of Great Britain and Ireland;

1. The proviso repealed by Sec. 9 of Act 4 of 1892.
2. Subs. by Bengal Act 3 of 1881.
3. Subs. by Act 4 of 1892.
4. The proviso ran thus:—Provided that the amount expended for such improvement and benefit in any one year shall not exceed ten percentum of the surplus which the accounts of the previous year may show to have been available after paying or making provision for the payment of all expenses incurred upto the end of such previous year, unless, in the Court and of the Lieutenant-Governor, it is desirable for the protection or in the interests of the ward or his property to expend an amount exceeding such percentage.
5. Subs. by Adaptation Order.

¹[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 [* *]² or of any [State]¹,

stock or debentures of or shares in railway or other companies, the interest whereon [had, before the fifteenth day of August, 1947, been guaranteed]¹ 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 [any Central or Provincial Act or Act of the Legislature of a Part-A State or Part-C State]¹;

such other securities, stock or shares, guaranteed by the ³[Central Government or the [Government of Bihar or debentures issued by the Government of Bihar]⁴, as to the Court shall deem fit; [or, mortgages on immovable property]⁵.

⁶[**50-A. Provisions of this Part not to apply to wards who are trustees.**—Nothing in this Part shall apply to a ward who is a trustee or to the trust property of such ward of which the Court has taken charge under clause (e) of sub-section (1) of Section 6].

⁷[PART VI-A

Trust Estates

50-B. Collector or officer appointed by the Court to manage trust property if no manager is appointed.—If no manager of trust property under the charge of the Court is appointed, the Collector of the district in which the greater part of such property is situated or any other officer whom the Court may appoint in that behalf, shall be competent to do, under the orders of the Court, anything that could be legally done by the trustee of such property.

50-C. Standard of management of trust property by manager.—The manager shall deal with the trust property as carefully as a man of ordinary prudence would deal with such property if it were his own, and the manager so dealing shall not be responsible for the loss, destruction or deterioration of the trust property.

In this section and in the following provisions of this Part, "manager" means the person appointed by the Court to manage trust property which is under the charge of the Court.

50-D. Manager to take all steps necessary for preservation of trust property.—The manager is bound to maintain and defend all such suits, and subject to the provisions of the instrument of trust to take such other steps as, regard being had to the nature and amount or value of the trust property, may be reasonably requisite for the preservation of the trust property and the assertion or protection of the title thereto.

1. Subs. by Adaptation of Laws Order.

2. Repealed by the Indian Independence (Adaptation of Ben. and Punjab Acts) Order, 1948.

3. Subs. by Adaptation Order.

4. Subs. by Act 4 of 1940.

5. Added by Ben. Act 2 of 1909.

6. Ins. Sec. 50-A to 50-S by Sec. 28 of Bihar Act 4 of 1940.

7. Ins. by Sec. 29 *ibid*.

50-E. Manager to keep accounts and furnish information.—The manager shall—

- (a) keep clear and accurate accounts of the trust property; and
- (b) at all reasonable times (not exceeding twice a year), at the request of the beneficiaries, furnish them with such information as may be required regarding the estate of the trust property.

50-F. Money received by manager to be applied under directions of the Court.—All money received by the manager shall be applied to the purpose hereinafter mentioned, in accordance with such instructions as the Court may from time to time give in this behalf. Priority shall be given to the purposes included in Class I over those included in Class II and to the purposes included in Class II over those included in Class III.

CLASS I

The payment of all charges necessary for the management and supervision of the trust property.

CLASS II

The punctual payment of the Government revenue, all cesses, rates and taxes, and other public demands from time to time due in respect of the trust property or any part of the trust property.

CLASS III

The payment of all rents, cesses and other payments due to any superior landlord in respect of any land forming part of the trust property.

The liquidation of debts charged on the trust property or legally payable by the trustees out of the trust property.

The payment of all expenses incurred in litigation necessary in connection with the trust property.

The maintenance in an efficient condition of the buildings and other immovable property of the trust.

The payments to the beneficiaries in accordance with the provisions of the instrument of trust.

50-G. Non-liability of manager paying without notice of transfer by beneficiary.—When the interests of any beneficiary becomes vested in another person, and the manager, not having notice of the vesting, pays or delivers trust property to the person who would have been entitled thereto in the absence of such vesting, the manager is not liable for the property so paid or delivered.

50-H. Duty of manager when beneficiary's interest forfeited to the Government.—When the interest of a beneficiary is forfeited or awarded by legal adjudication to the ¹[Government], the manager is bound to hold the trust property to the extent of such interest for the benefit of such person in such manner as the ¹[State] Government may direct in this behalf.

50-I. Investment of surplus money.—If any surplus remains after providing for the purposes mentioned in Section 50-F or where the trust property consists of money and cannot be applied either immediately or at an early date to the purposes of the trust, the manager is bound (subject to any directions contained in

1. Subs. by the Adaptation of Laws Order.

the instrument of trust) to invest it in the securities specified in clauses (a) and (b) of Section 20 of the Indian Trusts Act, 1882, in such order as the Court may decide, and in no other.

50-J. Restriction on power of manager to grant lease of trust property.—Except in accordance with rules made or instructions issued in this behalf by the Court, the manager shall not grant a lease of any trust property for a term exceeding 9 years from the date of the execution of the lease and without reserving the best yearly rent that can be reasonably obtained.

50-K. Power of manager to compound, etc.—Notwithstanding anything contained in the instrument of trust, the manager may, with the previous permission of the Court,—

- (a) accept any composition or any security for any debt or for any property claimed;
- (b) allow any time for payment of any debt;
- (c) compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the trust; and
- (d) for any of those purpose, enter into, give, execute and do such agreements, instruments of composition or arrangement, releases and other things as to him seems expedient, without being responsible for any loss occasioned by any act or thing so done by him in good faith.

50-L. Power of manager to grant receipt.—The manager may give a receipt in writing for any money securities or movable property payable, transferable, or deliverable to the trustee in respect of the trust property of which he has been appointed manager and, in the absence of fraud, such receipt shall discharge the person paying, transferring or delivering the same therefrom, and from seeing to the application thereof, or being accountable for any loss or misapplication thereof.

50-M. General authority of manager.—In addition to the powers expressly conferred by this Act, the manager may do all acts which are reasonable and proper for the realisation, protection or benefit of the trust property.

50-N. Power of manager to sell trust property.—Where the trustee is empowered to sell any trust property, the manager may sell the same subject to prior charges or not, and either together or in lots by public auction or private contract, and either at one time or at several times, unless the instrument of trust otherwise directs.

50-O. Power of manager to determine conditions of sale.—The manager making any such sale may insert such reasonable stipulations either as to title or evidence of title, or otherwise, in any conditions of sale or contract for sale, as he thinks fit; and may also buy in the property or any part thereof at any sale by auction, and rescind or vary any contract for sale, and resell the property so bought in, or as to which the contract is so rescinded, without being responsible to the beneficiary for any loss occasioned thereby.

Where a trustee is so directed, the manager may sell trust property or invest money in the purchase of property and may exercise a reasonable discretion as to the time of effecting the sale or purchase.

50-P. Power of manager to convey.—For the purpose of completing any such sale, the manager shall have power to convey or otherwise dispose of the property sold in such manner as may be necessary.

50-Q. Power of manager to vary investments.—The manager may, at his discretion, call in any trust property invested in any security and invest the same in any of the securities mentioned in Section 50-I, and from time to time vary any such investments for others of the same nature.

50-R. Power of manager to apply property to maintenance, education and other reasonable purposes of ward.—Where the trust property or any part of it is held by a trustee in trust for a minor, the manager may, at his discretion, pay to the guardian (if any) of such minor, or otherwise apply for or towards his maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage or funeral, the whole or any part of the income to which he may be entitled in respect of such property; and the manager shall accumulate all the residue of such income by way of compound interest by investing the same and the resulting income thereof from time to time in any of the securities mentioned in Section 50-I, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations have arisen.

50-S. Power of beneficiary to appeal to Collector.—Any beneficiary aggrieved by any act, omission or order of the manager which he considers prejudicial to his interest or to the preservation of the trust property, may appeal to the Collector.]

PART VII

Suits

51. Manager or Collector to be next friend or guardian in suits by or against ward.—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 Wards may 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.

¹[51-A. Power of Court to authorise manager to bring suits on behalf of owner of property.—(1) If the Court retains charge of any property under Section 13 or Section 13-A, it may confer on the manager generally or in any specified case or class of cases all such powers as to bringing any defending, on behalf of the owner of the property, suits relating to such property as the owner of such property would have had if the Court had not so retained charge.

(2) If the Court confers on the manager any power under sub-section (1), the manager shall be entitled to bring or defend any suit in pursuance of such power, and shall in any such suit be described as the manager of the property, of which or of any part of which the Court retains charge under Section 13 or Section 13-A,

1. Ins. by Sec. 2 of Bihar Act 1 of 1936, and made applicable by Section 3 thereof to suits pending on the date when that Act came into force (2nd December, 1936).

acting on behalf of the owner of the property, and it shall not be necessary to name such owner.]

52. Power of Court of Wards to nominate another person to be next friend or guardian for suit.—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. Payment of costs.—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. Service of process against wards.—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 suit as aforesaid of such ward.

55. Suits not to be brought on behalf of wards unless authorized by the Court of Wards.—No suit shall be brought on behalf of any ward ¹[by a manager], unless the same be authorized 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 authorized by an order of the manager of the landed property on which such rents are due.

56. Saving of the suits in High Court.—Nothing contained in this Part shall apply to any suit instituted or pending in the High Court [¹* * ²].

³**[56-A. Provisions of this Part not to apply to wards who are trustees.**—Nothing in this Part shall apply to a ward who is a trustee or to the trust property of such ward of which the Court has taken charge under clause (e) of sub-section (1) of Section 6 or to the manager appointed by the Court to manage such trust property.]

PART VIII

Penalties

57. For disobeying certain orders of Collector.—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.

58. For disobeying orders under Section 47.—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:

⁴[Provided that the Collector may release any person who has been so imprisoned, on his furnishing sufficient security for his attendance and for the

1. Ins. by Sec. 7 of Bengal Act 3 of 1881.

2. Rep. by Section 6 of Bengal Act 1 of 1906.

3. Ins. by Sec. 30 of Bihar Act 4 of 1940.

4. Ins. by Sec. 8 of Bengal Act 3 of 1881.

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.]

¹**[58-A. Penalty on farmer neglecting to furnish accounts, etc.**—Any farmer, holding or having held 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 shall omit 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.

Such notice shall be served by tendering to the person to whom it may be directed a copy thereof, attested by the Collector, or by delivering such copy at the usual place of abode of such person or to some adult male members of this family; or, in case it cannot be so served, by posting such copy upon some 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.

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.]

59. For disobeying order of Court.—Any person who disobeys any lawful 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.

²**[59-A. Persons employed by Court to be "public servants".**—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.]

PART IX

Miscellaneous

³**[60. Disabilities of Ward.**—A ward shall not be competent—

1. Ins. by Sec. 9 of Bengal Act 3 of 1881.

2. Ins. by Sec. 7 of Bengal Act 1 of 1906.

3. Subs. by Sec. 31 of Bihar Act 4 of 1940.

- (a) to transfer or create any charge on, or interest in, any part of his property which is under the charge of the Court, or to enter into any contract which may involve him in pecuniary liability; but nothing in this clause shall be deemed to affect the capacity of a ward to enter into a contract of marriage:

Provided that he shall not incur in connection therewith any pecuniary liability except such as, having regard to the personal law to which he is subject, and to his rank and circumstances, the Court may, in writing, declare to be reasonable;

- (b) to adopt, without the consent of the ¹[State] Government obtained previously to such adoption on application made to the ¹[State] Government through the Court; or
- (c) to dispose of his property by will, without the consent in writing of the Court given either previously or subsequently to the making of the will but during the lifetime of the testator:

Provided, first, that the ¹[State] Government shall not withhold its consent under clause (b) and the Court shall not withhold its consent under clause (c), if the adoption or testamentary disposition as the case may be, is not contrary to the personal or special law applicable to the ward, and does not appear likely to cause pecuniary embarrassment to the property or to lower the influence or respectability of the family in public estimation:

Provided, secondly, that the provisions of clauses (b) and (c) shall not apply to any proprietor whose property has been taken under the charge of the Court on an application made under clause (d) of sub-section (1) of Section 6: and

Provided, thirdly, that the ¹[State] Government may ratify any adoption made without its consent, or any will to the making of which the consent of the Court was not given during the lifetime of the testator.]

²[60-A. Exemption of ward's property from execution proceedings in certain cases.]—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.]

³[60-B. Certain persons to be deemed to be wards.]—For the purposes of Part VII and Sections 60 and 60-A, a person whose property is under the charge of the Court of Wards by virtue of the second clause of Section 11, or charge of whose property has been retained under Section 13-A, shall be deemed to be a "ward", but only so far as regards such property.]

1. Subs. by the Adaptation of Laws Order.

2. Ins. by Sec. 13 of Act 4 of 1892.

3. Ins. by Sec. 8 of Bengal Act 1 of 1906.

¹[60-C. Deeds and other instruments.]—(1) All deeds, contracts or other instruments executed by the Court in the exercise of its powers under this Act may be executed in its own name or on behalf of the ward, as the circumstances of the case may require.

(2) Covenants entered into by the Court shall be binding on the Court only so long as the ward or the property affected by such covenants remains under its charge and only to the extent of such property; such covenants shall be binding on the ward or on the person entitled to such property after the ward or the property or both shall have ceased to be under the charge of the Court.]

61. to 62. [Repealed by Sec. 33 of Bihar Act 4 of 1940 & Sec. 9 of Ben. Act 1 of 1906.]

²[63. Recovery of interest on arrears of rent.]—Any amount of interest which has accrued due, on arrears of rent or other demand recoverable as rent payable to the manager of an estate which is in charge of the Court, may be recovered in any manner and by any process according to which such arrears may be recovered under any law for the time being in force; and any Court or officer who is competent to make an order or certificate in execution of which such arrears or the demands are recoverable may direct that any costs incurred by the manager in obtaining such order or 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.]

64. Record of reasons when penalty imposed under Section 57 or 58.—When any penalty is imposed 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.

³[64-A. Publication of notices.]—Any notice required to be published by the provisions of sub-section (1) of Section 10-A, or of sub-section (1) of Section 10-E, shall be published—

- (a) in the English and in the vernacular Official Gazettes;
- (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 notice 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 situate.]

65. Procedure when Court's jurisdiction ceases.—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

1. Ins. by Sec. 32 of Bihar Act 4 of 1940.

2. To be read instead of the original Section 63 which stood repealed by Bengal Act 7 of 1880, Now see Sec. 10 of Bengal Act 3 of 1881.

3. Ins. by Sec. 10 of Bengal Act 1 of 1906.

more than sixty and not less than fifteen days from the date of such order; and copies of such order shall be published as the Court may direct.

¹[65-A. Recovery of expenses after release of property.]—Any expense incurred by the Court on account of any property under its charge may, after the release of such property, be recovered as a demand, under Bengal Act VII of 1880² or any other Act at the time being in force for the recovery of public demands, 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.]

66. Judicial powers of Collector in making inquiries.—A Collector making any inquiry under this Act may exercise any power conferred by the Code of Civil Procedure on a Civil Court for the trial of suits.

67. Appeals.—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.

68. Control by Court.—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.

69. Control by State Government.—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 ³[State] Government.

⁴[69-A. Bar of suits and other proceedings.]—No suit shall be instituted against the ³[Government] in respect of anything done or purporting to be done under this Act or in respect of any alleged neglect or omission to perform any duty devolving on the ³[State] Government or the Court, or any of the officers subordinate to it and acting under this Act, or in respect of the exercise of, or the failure to exercise, any powers conferred by this Act on the ³[State] Government or the Court, or any officer subordinate to it and acting under this Act, except for the recovery of possession of property in charge of the Court on the ground that such property is not subject to a trust, or for making the Court chargeable with or accountable for the loss or misapplication of any property in its charge or the income thereof, where the loss or misapplication has been occasioned by or

through the wilful neglect or default of the Court or of any officer subordinate of the Court.

¹[69-B. Application of Act to estate of Rulers of Indian States.]—The powers and functions conferred on the State Government by or under this Act shall, in relation to the estates of Rulers of Indian State, be powers and functions of the Central Government.]

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

- (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.

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

1. Ins. by Sec. 11 of Bengal Act 3 of 1881.

2. Bengal Act 7 of 1880 was repealed by Bengal Act of 1895 which has been again repealed by Bihar and Orissa Public Demands Recovery Act, 1914 (4 of 1914).

3. Subs. by the Adaptation of Laws Order.

4. Ins. by Sec. 34 of Bihar Act 4 of 1940.

1. Ins. by para 3 and Sch. XI, by A.L.O.