



SUPPLEMENT
TO THE
BOMBAY GOVERNMENT GAZETTE.

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MONDAY, 8TH SEPTEMBER 1862.

PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

The following Report of the Select Committee of the Council of the Governor of Bombay for the purpose of making Laws and Regulations, together with the Bill, as altered by them, is published for general information:—

Report of the Select Committee appointed to consider and Report upon "A Bill to extend the Jurisdiction of the Bombay Court of Small Causes, and to provide for the appointment of additional Judges of that Court."

The Select Committee having carefully considered the Bill referred to them, have made considerable alterations and additions thereto, and they recommend that the Bill should be passed with the following amendments:

They recommend that the title of the Bill should be "A Bill to amend Act IX. of 1850, and to extend the provisions thereof so far as the same relate to the Bombay Court of Small Causes," and that the preamble should stand as follows:—"Whereas it is expedient to extend the provisions of Act IX. of 1850 so far as the same relate to the Bombay Court of Small Causes, and to alter and amend the said Act in manner hereinafter mentioned."

Section I.—Section I. is new, and the Committee recommend it in preference to the one in the Bill (taken from the Calcutta Bill) for the following reasons:—

It is doubtless the intention of the Legislative Council to extend the jurisdiction of the Court to Rupees 1,000 in every instance in which at present it possesses jurisdiction to the extent of Rupees 500 in amount or value. Section XXV. of Act IX. of 1850, commonly called the jurisdiction clause, specifies three different subject matters of jurisdiction—"Debt," "Damages," and "Property," but by omitting the word "Property" in the 1st Section of the present Bill, no jurisdiction is given with reference to the recovery of property either real or personal, so that no action of Detinue for the recovery of goods in specie, and no action of ejectment for the recovery of lands or houses of a value in either case exceeding Rupees 500, can be brought unless this Section is altered. It appears to the Committee highly desirable that the wording of the XXV. Section of Act IX. of 1850 should be followed as closely as possible in this Bill, and the present Section has been accordingly framed on that principle.

Another instance in which extended jurisdiction is not given by this Bill is with reference to unliquidated balances of Partnership Accounts. Section XXXII. of Act IX. of 1850 enacts that "the jurisdiction of the Court shall extend to the recovery of any demand not exceeding the sum of Rupees 500, which is the whole or part of the unliquidated balance of a Partnership account or the amount or part of the amount of a distributive share under an intestacy, or of any legacy under a Will," and the Committee are of opinion that the whole of that Section substituting Rupees 1,000 for Rupees 500 should be added to the 1st Section, which they have therefore done.

The reasons of the Committee for increasing the jurisdiction with reference to legacies and distributive shares under intestacies to Rupees 1,000 instead of adopting the Sections (Sections XVII. to XXII.) recommended by the Judges of the late Supreme Court, will be given when commenting on those Sections. In extending the jurisdiction from Rupees 500 to Rupees 1,000, care has been taken so to modify the original draft as in no way to interfere with the discretion of the High Court as established by Act of Parliament, the jurisdiction according to the amended Bill, as it now stands, being a concurrent one in all sums above Rupees 500 between the High Court and the Small Cause Court. Accordingly Sections VI., VII., XIII., XIV., and XV. of the original Bill have been struck out.

Section III. The Committee recommend that this Section be omitted. It is merely declaratory of the Law as it is known to exist with reference to the meaning of the words "balance of account or otherwise" as used in Section XXV. of Act IX. of 1850, and as that Section is to remain unrepealed, the Committee think it better, in order to preserve uniformity of language in the jurisdiction clauses of the two Acts, and to avoid the possibility of creating fresh doubts, to insert those words in Section I. of the Bill (which they have done), and to omit this Section.

Section IV. (Section III. in amended Bill).

In this Section the Committee would substitute for "any corporeal or incorporeal hereditament, or to any franchise" in the 2nd, 3rd, and 4th lines, the following words "any house, land, tenement, or hereditament."

Section V. (Section IV. in amended Bill).

The Committee have made a mere verbal alteration at the end of this Section.

Section VIII. (Sections VIII., IX., and X. in amended Bill).

The Committee recommend that Section VIII. be omitted, and that three Sections adopted from the corresponding Sections in the County Courts Amendment Act (19 and 20 Vic. C. 108, Sections 33, 34 and 35) be inserted instead.

The Select Committee have had before them a Petition from the Law Students at present practising in the Bombay Court of Small Causes. The Petitioners state that they are surprised to find no recognition whatever in the Bill before the Council, of the class to which they belong, and that they are strongly inclined to attribute such omission to the ignorance of the Honorable Mover concerned in framing the Bill of their existence as practitioners in the said Court, and not to any wish to deprive them of the boon conferred on them by the Government Resolution of the 14th April 1860. They therefore pray that provision may be made under this Bill for their fees and costs, as well as for those of Barristers and Attorneys.

The Select Committee who have learnt from the Honorable Member referred to, that the omission was not unintentional, have maturely considered the

I do not concur in this, as I have to make some observations, and eventually to propose an amendment.—JUGONNATH SUNKERSITT.

Petition of the Law Students, and do not esteem it necessary to recognize them. Their position is not affected by this Bill to extend the provisions of Act IX. of 1850, nor are they precluded by it from enjoying the advantages of the boon conceded to them as an encouragement to the study of law in the University of Bombay by the abovementioned Resolution of Government; the Select Committee having every reason to believe that the measure was only intended to be a temporary one, and not by any means for the purpose of creating a permanent new class of Pleaders.

Section IX. (Section XI. in amended Bill.)

The Select Committee bearing in mind that power is reserved to Government under Section XXI. of Act IX. of 1850 to alter and modify the fees of the said Court in such manner and to such extent as to Government shall seem fit, have thought it right to intro-

duce at the beginning of this Section after the words "Court of Small Causes" the words "subject to the provisions of Section XXI. of Act IX. of 1850."

They have further substituted for the words "the sum of two annas in the Rupee" the words "rateable fee or commission payable under the said Act," as the rateable fee or commission has already, the Committee believe, been reduced to one anna and a half in the Rupee.

They also think it undesirable in cases of large amount, brought within the jurisdiction of the Court by this Act, that suitors should be called upon to pay a rateable fee on the same scale as in cases of a small amount, and they have therefore inserted a proviso "that in suits brought within the jurisdiction by Section II. of this Act, no larger sum than Rupees 125 shall be paid in respect of the rateable fee or commission aforesaid."

Section X. (Sections XIV., XV., XVI., and XVII., in amended Bill.)

Section XIV. has been framed with the object of affording the Governor in Council the utmost liberty of choice to enable him to nominate the most fitting person for the important office of First Judge, and to include in the field of selection the class of Solicitors, and experienced Judicial Officers of the Covenanted and Uncovenanted Services.

The Committee have had before them the precedents afforded them by Acts of Parliament, by which the emoluments of Judges in the several Courts are fixed by law, of which the most recent instance is the Act constituting the High Courts of the several Presidencies. It appears to the Committee wise to fix such emoluments and salaries by law on grounds of the highest expediency.

With respect to obtaining the services of Barristers who are qualified by learning and character, of Solicitors in the enjoyment of lucrative practice, and of experienced judicial servants of the Crown, it will be easily understood that smaller salaries than those mentioned in Section XV. of the amended Bill will fail to attract them to the Bench of the Small Cause Court. It is therefore strongly recommended that salaries of less amount than those mentioned in the Bill may not be adopted.

It may here be remarked that in the Bill as recommended to stand by the Select Committee, it is rendered imperative by Law that two of the Judges shall be Barristers or Attorneys; but there is nothing to preclude the appointment of more of these classes, if it shall seem expedient to the Governor in Council, it being obvious that such appointments cannot but depend upon a variety of circumstances.

It appears to the Committee that besides the salaries, it would be well to introduce a system of pensions for the Small Cause Court Judges analogous to that instituted for the High Court.

According to the Uncovenanted Rules, a Judge of the Small Cause Court drawing a salary of not less than £1,500 per annum would be entitled to receive of £500 per annum after 15 years' service, provided that he was pronounced by medical certificate to be incompetent for further duty.

The Committee propose to modify this Rule in favour of Small Cause Court Judges, so far as the necessity for producing a medical certificate is concerned, and to assign a pension of £500 per annum to any Small Cause Court Judge who shall have acted as such for a period of not less than 15 years, time passed on furlough not being allowed to count towards such pension. Judges who may also be members of the Covenanted Civil Service will not be affected by this provision, as their pensions are provided for under different Regulations.

The Committee are also of opinion that provision should be made for the appointment by Government of Acting Judges in the case of the temporary absence of any of the Judges from illness or any other cause.

Acting upon the above principles, the Committee have thought it right to omit Section X. and to substitute Sections XIV., XV., XVI., and XVII. in the amended Bill.

Section XI. (Section XVIII. in amended Bill.)

The Committee consider that the First Judge is quite competent to make such arrangements as may be necessary for the distribution of the business of the Court among the various Judges thereof, and they do not think it desirable that his arrangements should be subject to revision by the Judges of the High Court.

They have amended the Section accordingly.

Section XII. The Committee recommend that Section XII. be omitted, as they consider the restrictions imposed by it in some respects objectionable.

Its provisions, too, are inconsistent with Section XIV. of the Bill as amended by the Select Committee.

Sections XIII., XIV., and XV.

The Committee have already stated in their concluding remarks on Section I. the reasons why they recommend the omission of these Sections.

Sections XVII., XVIII., XIX., XX., XXI., and XXII.

The Committee recommend that these Sections be omitted.

Not only is the jurisdiction which is proposed to be given by the first of these Sections based upon a different principle to the jurisdiction established by Act IX. of 1850 in limiting it by the responsibility of the Defendant or by the amount of assets in his hands, instead of measuring it by the rights of the Plaintiff and the amount of his claim, but the Section will, in many instances, be found to be in direct conflict with the provisions of Section XXXII. of Act IX. of 1850, and cannot therefore stand in connection with it. Take for example the case of a person entitled to a legacy of Rupees 500 under a Will, or to a distributive share of equal amount under an intestacy. Under the existing jurisdiction, he can sue for and recover that sum, whatever the amount of assets the deceased may have left; but under the proposed jurisdiction he could not sue for his legacy or share if the assets exceeded Rupees 5000 by a single rupee. In such a case the effect of the XVII. Section would be to curtail and lessen the existing jurisdiction instead of increasing it according to the avowed intention of the Legislature. Moreover, actions are seldom brought in the Court of Small Causes to recover legacies or distributive shares except in cases of Native estates, and since in such cases it really happens that Probate of Wills or Letters of Administration are taken out by the representatives of the deceased persons, there would, under the provisions of this Section, be no one whom the Plaintiff could sue. Executors and Administrators being the only persons mentioned as the parties against whom an action could be brought.

The XVIII., XIX., XX., XXI., and XXII. Sections are hereby auxiliary to the XVII., and should therefore in the opinion of the Committee be rejected with it.

The Committee have now referred to all the Sections of the Bill in regard to which they propose either alteration or omission, and they now proceed to call attention to certain additional Sections which they have deemed right to insert in the amended Bill.

Section V. of amended Bill.

The Committee have had their attention called to the great inconvenience to which Defendants residing out of the limits of the Court's jurisdiction are frequently subjected by the provisions of Section XXVIII. of Act IX. of 1850, and they recommend the repeal of that Section and the enactment of Section V. in the amended Bill, whereby persons are to be deemed to be within the jurisdiction of the Court who dwell or carry on business by themselves, their Agents or Moonims, or work for gain within the district of the Court at the time of bringing the action, provided that service of any summons on a Defendant's Agent or Moonim shall not be deemed good service, unless such service shall have been specially ordered by a Judge of the Court on the application of the Plaintiff or his Attorney.

Section VI. of amended Bill.

The Committee recommend the adoption of Section VI. of the amended Bill, empowering the duly constituted Agent or Moonim of an absent Plaintiff to take out a summons in the name of his Principal, and to conduct and prosecute the suit in the same way in every respect under the provisions of this Act, as if he were a Plaintiff in his own right.

The necessity of such a provision has been much felt by many Firms in Bombay, European as well as Native, which in the absence of Partners are conducted by Agents or Moonims.

Section VII. of amended Bill.

Frequent cases having arisen in which the compulsory personal attendance of a Plaintiff or a Defendant has been productive of much inconvenience, and has served no good purpose, the Committee have thought it right to recommend that Sections XXXVIII., XLII., and XLIII., of Act IX. of 1850 be so far modified, as to permit the Court to dispense with such personal attendance, when satisfied that it is wholly unnecessary.

Section XII. of amended Bill.

The Committee have reason to believe that Defendants are frequently put to considerable inconvenience and expense by suits being instituted against them in the Small Cause Court, in which, when brought to trial, it has been found that the Court has no jurisdiction whatever.

In order to prevent as far as possible the institution of such suits for the purposes of extortion or otherwise, and to remove the grievance of a Defendant having to defray the expense of resisting a suit which ought never to have been brought against him, the Committee recommend the insertion of the XII. Section, whereby the Court is empowered to order the Plaintiff to pay to the Defendant all or any of the costs and expenses to which he may have been put in respect of such suit, and to award such further compensation as to the Court shall seem fit.

Sections XIX. to XXIII. of amended Bill, both inclusive.

With the view of remedying an acknowledged defect in the existing machinery of the Court's procedure, the Committee recommend the adoption of the above clauses adapted from the Code of Civil Procedure, to enable the Court to issue Commissions for the examination of witnesses who may be unable personally to appear and give their evidence.

Section XXIV. of amended Bill.

The Committee recommend the insertion of an Interpretation Clause, and have therefore prepared the above Section.

In conclusion the Select Committee beg to acknowledge the great assistance they have derived from the information and suggestions which they have received from the present able First Judge of the Bombay Court of Small Causes, and from the Committee of the Bombay Law Society.

MICHAEL H. SCOTT.

W. R. MANSFIELD.

W. E. FRERE.

W. B. TRISTRAM.

JUGONNATH SUNKERSETT.

ARTHUR J. LEWIS.

A Bill to amend Act IX. of 1850, and to extend the Provisions thereof so far as the same relate to the Bombay Court of Small Causes.

WHEREAS it is expedient to extend the provisions of Act IX. of 1850 so far as the same relate to the Bombay Court of Small Causes, and to alter and amend the said Act in manner hereinafter mentioned; It is enacted as follows:—

Preamble.

I. The jurisdiction of the Court held, or to be held, in the Town of Bombay under

The Small Cause Court may take cognizance of Suits for Sums not exceeding Rupees 1,000.

Act IX. of 1850 shall extend to all suits where the debt or damage claimed or value of the property in dispute is not more than Rupees 1,000, whether on balance of account or otherwise (except the several matters and suits specified in the proviso to Section XXV. of the same Act), and shall also extend to the recovery of any demand not exceeding the sum of one thousand Rupees, which is the whole or part of the unliquidated balance of a partnership account, or the amount or part of the amount of a distributive share under an intestacy or of any legacy under a Will; and the several powers and provisions of the said Act, and all rules, orders and regulations, which have been or may be made in pursuance of the said Act shall extend to all suits which may be instituted under this Act, and to all proceedings and judgments in relation thereto, as fully and effectually to all intents and purposes as the same respectively are now or may be applicable to suits and proceedings within the present jurisdiction of the Bombay Court of Small Causes.

II. If both parties shall agree by a memorandum signed by them or their respective

The Court may, by agreement, try matters beyond its jurisdiction.

Attorneys that the said Court of Small Causes shall have power to try any suit (not coming under the proviso in Section XXV. of Act IX. of 1850) when the debt, damage, or demand claimed, or the value of the property in dispute is more than one thousand

Rupees the said Court shall have jurisdiction to try the same.

III. In any suit in the said Court in which the title to any house, land, tenement or hereditament shall incidentally come into question, the Judge shall have power to decide the claim or demand which it is the immediate object of the suit to enforce, notwithstanding the form in which the Summons may have been issued.

IV. The powers and provisions of Section XCI. of Act IX. of 1850, are hereby extended, so as to apply to the case of any person who shall hold or occupy any house, land, or tenement, of which the value or the rent payable in respect thereof does not exceed the rate of one thousand Rupees, and the said Section XCI. of Act IX. of 1850 shall be read as if the words "five hundred" were omitted, and the words "one thousand" substituted for them, and Sections XCI. XCII. XCIII. and XCVI. of the said Act IX. of 1850 shall respectively be read as if the words "landlord, or other person having right to the immediate possession of the premises" were added after the word "owner."

V. Section XXVIII. of Act IX. of 1850 is hereby repealed, and it is enacted that all persons shall be deemed within the jurisdiction of the Court who dwell or carry on business by themselves, their Agents or Moonims, or work for gain within the district of the Court at the time of bringing the action, provided that service of any summons on a Defendant's Agent or Moonim shall not be deemed good service, unless such service shall be specially ordered by a Judge of the Court on the application of the Plaintiff or his Attorney.

VI. Whenever parties residing out of the district of the Court carry on business therein by means of a duly constituted Agent or Moonim, it shall be lawful for such Agent or Moonim to take out a Summons in the name of his Principal, and such Agent or Moonim shall appear on the day on that behalf named in the Summons, and shall be entitled to conduct and prosecute the suit in the same way in every respect, under the provisions of this Act, as if he were a Plaintiff in his own right.

VII. In modification of the provisions of Sections XXXVIII., XLII. and XLIII. of Act IX. of 1850, it is enacted that it shall be competent for the Court when satisfied that the personal attendance of either the Plaintiff or of the Defendant is wholly unnecessary, to dispense with such personal attendance, provided always that nothing in this Section shall prevent the Court from adjourning the trial, and from requiring the attendance of a Plaintiff or a Defendant, if in the course of the suit it shall appear either necessary or expedient to demand his presence.

VIII. With respect to proceedings in suits brought within the jurisdiction by this Act, the First Judge of the Court shall be empowered to frame a scale of costs and charges to be paid to Counsel and Attorneys, and from time to time to amend such scale; and such scale or amended scale certified under his hand, shall be submitted to two or more of the Judges of the High Court, who may allow or disallow or alter the same; but such scale shall be in force until disallowed or altered. The expense of employing a Barrister or an Attorney, or both, either by the Plaintiff or by the Defendant, shall not be allowed as costs unless by order of the Judge who shall try the case.

IX. With respect to such proceedings as are referred to in the last preceding Section all costs and charges between party and party shall be taxed by the Clerk of the Court, but his taxation may be reviewed by the Judge who tried the case, or in his absence by one of the other Judges of the Court on the application of either party; and no costs or charges shall be allowed on such taxation which are not sanctioned by the scale then in force.

X. With respect to such proceedings as are last hereinbefore referred to, all costs and charges between Attorney and Client shall on the application either of the Attorney or Client, but not otherwise, be taxed by the Clerk of the Court, but his taxation may be reviewed by the Judge who tried the case, or in his absence by one of the other Judges of the Court, on the application of either party; and no costs or charges shall be allowed in such taxation which are not sanctioned by the scale then in force, and no Attorney shall have a right to recover from his Client any costs or charges in respect of such proceedings, unless they shall have been allowed either on such taxation or on the taxation of the proper Officer of the High Court.

XI. There shall be payable in the Bombay Court of Small Causes, subject to the provisions of Section XXI. of Act IX. of 1850 in every suit of an amount to which jurisdiction is given to the said Court by this Act, the fees set forth in the schedule hereto annexed, besides the rateable fee or commission payable under the said Act on the amount of the sum claimed, which fee shall be paid over to the same account as that to which the fees payable under Section XIX. of Act IX. of 1850 are paid over. Provided always that in suits brought within the jurisdiction by Section II. of this Act, no larger sum than Rupees 125 shall be payable in respect of the rateable fee or commission aforesaid.

In Suits in which the Court has no jurisdiction, Plaintiff may be ordered to pay Defendant his costs and expenses and such further compensation as the Court may think fit.

XII. In any suit brought in the said Court in which it shall appear that the Court has no Jurisdiction, it shall be lawful for the said Court to order the Plaintiff to pay to the Defendant all or any of the costs and expenses to which he may have been put in respect of the said suit, and such further compensation as to the Court shall seem fit.

XIII. Any Judge of the said Court of Small Causes may, at all times, amend all defects and errors in any proceedings in such Court, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not, and all such amendments may be made with or without costs, and upon such terms as to the Judge may seem fit, and all such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties shall be so made if duly applied for.

XIV. The Governor in Council shall appoint such number of Judges of the said Court as may be necessary, of whom he shall nominate one to be First Judge, two of which said Judges shall be Barristers-at-Law, or Advocates of one of the High Courts of Judicature in India or of the Court of Session in Scotland, or Attorneys, or Solicitors, or Writers to the Signet. Provided that it shall not be incumbent on the Governor in Council to select both of the aforesaid two Judges from any one of the above mentioned branches of the Legal Profession, and Provided that the present First Judge of the Bombay Court of Small Causes as now constituted shall be First Judge of the Court as extended by this Act.

XV. The Governor in Council shall assign the Judges the following Monthly Salaries:—
 First Judge Rupees 2,000. Second Judge Rupees 1,500. Third Judge Rupees 1,500. Fourth Judge Rupees 1,000. Fifth and other Judges each Rupees 750.

XVI. Every Judge of the Bombay Court of Small Causes who shall have performed 15 years of actual service as a Judge in the said Court shall be entitled to a pension of £500 or Rupees 5,000 per annum, whether he shall have been appointed before or after the passing of this Act. Provided that he is not a Member of the Covenanted Civil Service of India.

XVII. In cases of illness or absence on leave of any Judge, it shall be lawful for the Governor in Council to appoint some other person to act as the Deputy of such Judge during such illness or absence, and every Deputy so appointed during the time for which he shall be so appointed shall have all the powers and privileges, and perform all the duties of the Judge for whom he shall have been so appointed, and shall receive such salary as the Governor in

Council shall assign him. Provided that the same shall not exceed the monthly salary of the Judge for whom he acts as Deputy.

XVIII. The First Judge shall make such arrangements as he shall think fit with regard to the distribution of the suits and of the general business of the Court among the various Judges thereof, and he may vary such arrangements from time to time.

XIX. Where the evidence of a witness in the Bombay Court of Small Causes is required, who is resident out of the district of the Court, or who is unable, from sickness or infirmity, to attend before the Court to be personally examined, or is a person exempted by reason of rank or sex from personal appearance in Court, the Court may, of its own motion, or on the application of any of the parties to the suit, or on the representation of the witness, and subject to and upon such terms, with reference to costs or otherwise, as to the said Court may appear fit and proper, order a Commission to issue for the examination of such witness or interrogatories or otherwise, and may, by the same or any subsequent order, give all such directions for taking such examinations as may appear reasonable and just. If the witness be resident within the district of the Court, the Commission may be issued to any Officer of the Court, or to any other person or persons whom the Court may think proper to appoint. If the witness be resident at some place which is beyond the District of the Court, the Commission may be issued to the Court within whose jurisdiction the witness may reside, and which can most conveniently execute the same, or to any other person or persons whom the Court may think proper to appoint.

Cases in which Court may issue a Commission to examine witnesses.

When the witness resides within the Court's District.

When beyond the Court's District.

When the witness is not within the jurisdiction of the High Court of Judicature at Bombay, but within the British Territories or the Territories of a Native Prince or State in alliance with the British Government.

XX. When the evidence of a witness is required, who is resident at some place not within the jurisdiction of the High Court of Judicature at Bombay, but within the British territories in India, or within the territories of a Native Prince or State in alliance with the British Government, the Court, if it be satisfied that the evidence of such witness is necessary, may, of its own motion, or on the representation of any of the parties to the suit, issue a Commission for the examination of the witness.

XXI. When the evidence of a witness is required, who is resident at some place beyond the said territories, and not within the territories of a Native Prince or State in alliance with the British Government, the Court, if it be satisfied that such evidence is necessary, may, of its own motion, or on the application of any of the parties to the suit, issue a Commission to examine the witness.

When the witness is beyond the said Territories and not within the Territories of a Native Prince or State in alliance with the British Government.

To whom Commission may be issued in cases under the two previous Sections.

XXII. In the cases provided for by the two preceding Sections, the Commission may be issued to any person or persons whom the Court may think proper to appoint.

XXIII. After the Commission has been duly executed, it shall be returned, together with the deposition of the witness or witnesses who may have been examined thereunder to the said Court of Small Causes, unless otherwise directed by the order for issuing the Commission, in which case it shall be returned in terms of such order, and the Commission, and the return thereto, and the deposition of the witness or witnesses who may have been examined under such Commission, shall in all cases form part of the record of the suit, but no deposition taken under a Commission shall be read in evidence without the consent of the party against whom the same may be offered, unless it be proved that the deponent is beyond the jurisdiction of the Court, or dead, or unable from sickness or infirmity to attend to be personally examined, or exempted by reason of rank or sex from personal appearance in Court, or unless the Court shall, at its discretion, dispense with the proof of any of the above circumstances, or shall authorise the deposition of any witness being read in evidence, notwithstanding proof that the causes for taking such depositions have ceased at the time of reading the same.

Commission to be returned with the depositions of the witness.

When depositions may be read in evidence.

XXIV. In construing Act IX. of 1850 and this Act, the words "person" or "party" shall be understood to mean a Body Politic, or Corporate; and every word importing the singular number shall, where necessary

Interpretation Clause.

to give full effect to the enactments therein and herein contained, be understood to mean several persons or things as well as one person or thing; and every word importing the masculine gender shall, when necessary, be understood to mean a female as well as a male, unless in any of these cases there be something in the context inconsistent with such meaning.

XXV. This Act and the said Act IX. of 1850 shall be read and construed as one Act, as if the several provisions in the said Act contained not inconsistent with the provisions of this Act, were repeated and re-enacted in this Act.

This Act to be read as a part of Act IX. of 1850.

SCHEDULE OF FEES.

Sums not above	Every Summons or Subpoena.		Warrant.	
	<i>Rs.</i>	<i>as.</i>	<i>Rs.</i>	<i>as.</i>
Rs. 600	2	4	6	0
700	2	8	7	0
800	2	12	8	0
900	3	0	9	0
1,000	3	4	10	0
Sums above Rs. 1,000	4 annas additional for every Rs. 100 above Rs. 1,000		1 Rupee per each Rs. 100 above 1,000 Rupees.	

By order of His Excellency the Governor in Council,

L. H. BAYLEY,

Deputy Secretary to Government.

Poona, 4th September 1862.

PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

The following Report of the Select Committee of the Council of the Governor of Bombay for the purpose of making Laws and Regulations, together with the Bill as altered by them, is republished for general information :—

Report of the Select Committee appointed to consider and report upon a Bill for making better Provision for the Care of the Persons and Property of Minors in the Presidency of Bombay.

The Bill prepared by the Judges of the Sudder Adawlut and referred to the Committee is taken, with a few verbal alterations from Act XL. of 1858 Section XII., being an addition proposed by the Court, and Sections XXVI., XXVII., and XXVIII. being taken from Act XXVI. of 1854. As these Acts have now been for some time in operation in Bengal and Madras, and the Committee have heard no objections raised against them, they recommend that the Bill should be adopted, with the following alterations and additions :—

In Sections II., VI., and VIII. after the words “Will or Deed,” the Committee would add, “or other instrument in writing,” which will prevent technical objections being taken to what a Will or Deed is.

In Section X. the words in the 4th line “to the Public Curator or other person” should be omitted to remove any doubt or restriction on the power of appointing a Guardian after granting a Certificate of Administration, and after the word “Curator” in the 9th line, the Committee would add the words “or the legal heir of the Minor, or next in succession to the property.” “Provided that in the case of Minors who have inherited property by adoption, the natural Father may be appointed Guardian, the adoptive alone being excluded.” This provision is taken from Act XXXV. of 1858, which provides for the care and maintenance of Lunatics, and the Committee think that it is equally necessary in the case of Minors as of Lunatics to provide that those having an interest in the death of the Minor should not have the care of his person.

After the word “Minor” in the last line but 4 of the same Section, the Committee would recommend that the words “husband, wife, and children, if any,” be added, as in this country it may be necessary to make provision for them as well as for the Minor himself.

Section XII. is new, but a very necessary provision for the security of the property. The Committee, however, do not think it necessary to require security from the Guardian in charge of the Minor's person, and they would therefore suggest that the words “or whom it may appoint Guardian of the person” in the 5th line should be omitted.

In Section XIII. the Committee would suggest that the words “and other proceedings” be added after “inquiries,” and “or had” be added after the word “held” in the first line.

The Committee think that it would not be advisable to make over the Estate to one of a number of joint proprietors, when some have reached their majority and others continue in their minority entirely uncontrolled. They would therefore suggest that the following words be added at the end of Section XIV., “with such directions as to the shares of the still disqualified proprietors as to the Court shall seem fit and proper.”

They would omit the words “such earlier time as” in the 12th line of that Section.

In Section XVI. the Committee would substitute the word “all” for “any” in the 7th line, and for the words “received and disbursed” in the 16th line, would substitute “received, disbursed, and invested,” so as to secure a full account of the administration.

In Section XVII. the Committee would omit the words—

“Paid into the Public Treasury on account of the Estate, and may be” in the 7th line, and would substitute the following :—

“the Minor or of the Estate shall by him be invested on account of the Estate from “time to time in the Public Securities”

as the Committee do not see the advantage of paying the money into the Public Treasury merely to withdraw it and invest it in Public Securities, nor is it very easy to determine who is to withdraw the money from the Public Treasury and invest it in Public Securities.

In Section XVIII. the Committee would suggest that the prohibition should extend further than to mere sale or mortgage of the property, and they would suggest that the 10th and following line should run—

“no person shall have power to sell, alienate, mortgage, or otherwise encumber any immovable property, &c.”

The Committee agree with the Honorable Member who introduced the Bill that it is necessary to make provision in the Act for the marriages of Minors, which among many castes in this country cannot be deferred until after the Minor attains the period of legal majority, they therefore propose to insert the following Section as Section XXIX. of the Bill:—

“Every Guardian appointed under this Act who shall have charge of an unmarried Minor shall, if necessary, according to the custom of the Minor's sect or caste, make arrangements for and celebrate the Minor's marriage, and pay all the necessary expenses thereof out of the Estate, provided that those expenses shall in no case, without the sanction of the Civil Court, involve the Minor's Estate in debt, and that the marriage, if possible, be with the concurrence of the Minor's nearest relatives.”

As regards Section XXIX. of the draft Bill, the Committee have ascertained that 16 years complete is the period at which Hindoos, according to the Shasters, arrive at their majority. Among Mahomedans the question is still undecided, one School contending for 15 years of age, another for 20, the Committee would therefore recommend that 18 years, as proposed in the Bill, be retained as the age of legal majority of all castes.

With reference to Section XXX. of the Bill, if the amendment in Section X. proposed by the Committee be adopted, it will be necessary to omit the words in the 5th line—

“the appointment of the Guardian of the person of any Minor whose Father is living and is not a Minor and nothing in this Act shall authorize,”

and the words

“Father or”

in the 14th and 16th lines and

“(as the case may be)”

in the 17th line

as the Father may sometimes be the Minor's legal heir or next in succession to the property.

As special provisions are made in Act XXXV. of 1858 for the care of the persons and property of Lunatics, and it is in the opinion of the Committee desirable that Lunatics, if Minors, shall still be subject to that special enactment rather than to an Act intended only for Minors not labouring under any other disability, they would suggest that the following Section be added as Section

“XXXII. Nothing in this Act shall be held to interfere with the provisions of Act XXXV. of 1858 ‘an Act for making better provision for the care of the Estates of Lunatics.’”

The Committee would further recommend that the words

“in the Code of Civil Procedure”

be added at the end of Section XXXI. as it now stands (Section XXXIII. as will be if the Committee's suggestions are adopted).

The words “High Court” should be substituted for “Supreme Court” in the last Section of the Bill.

JUGONNATH SUNKERSETT.

W. E. FRERE.

ARTHUR J. LEWIS.

MADHOWROW VITTUL VINCHOORKUR.

RUSTOMJEE JAMSETJEE JEJEEBHOY.

*A Bill for making better Provision for the Care of the Persons and Property
of Minors in the Presidency of Bombay.*

Preamble.

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

Persons and property of Minors shall vest in the Civil Court.

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.

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.

institute or defend a suit on his behalf, although a Certificate of Administration has not been granted to such relative.

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 250, any Court having jurisdiction may allow any relative of a Minor to

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

a fit person to take charge of the property and person of such Minor.

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

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

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.

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.

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 the 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,

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

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 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

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

appointed under Section XIX. Act XIX. of 1841 (for the protection of moveable and immovable property against wrongful possession in certain cases), or if there be no Public Curator, to any fit person whom the Court may select for the purpose.

X. Whenever the Court shall grant a Certificate of Administration to the estate of a

Appointment of Guardian.

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, the adoptive alone being excluded. If the person appointed to be Guardian be unwilling to discharge the trust gratuitously, the

Guardian's Allowance.

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, 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.

Minor's Allowance.

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

Court may take Security.

Proviso,

person to whom it may grant a Certificate of Administration of the property of any Minor 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.

XIII. In all inquiries and other proceedings held or had by the Civil Court under this

Cost of inquiries under this Act.

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.

XIV. Whenever one or more of the proprietors of an estate which has been placed

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

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.

Proceedings of Collector subject to control of superior Revenue Authorities.

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

XVI. The Public Curator and every other Administrator to whom a Certificate shall have been granted under Section 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 1st 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 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.

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.

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.

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

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

Remuneration of Public Curator, &c.

XXV. Every Guardian appointed by the Civil Court under this Act who shall have charge of any male Minor shall be bound to provide for his education in a suitable manner. The general superintendence and control of the education of all such Minors shall be vested in the Civil Court.

XXVI. In the exercise of this superintendence and control, it shall be lawful for the Civil Court to direct that such 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 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, if necessary, according to the custom of the Minor's sect or caste make arrangements for and celebrate the Minor's marriage, and pay all the necessary expenses thereof 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, and that the marriage, if possible, shall be with the concurrence of the Minor's nearest relatives.

Persons under the age of 18 years to be held Minors for the purposes of this Act.

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 authorise 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.

Act not to authorise the appointment of Guardians of certain married women and other persons.

Guardianship during the minority of the husband of a Minor when to cease.

Act not to interfere with
Act XXXV. of 1858.

XXXII. Nothing in this Act shall be held to interfere with the provisions of Act XXXV. of 1858, "An Act for making better provision for the care of the Estates of Lunatics."

XXXIII. All orders passed by the Civil Court under this Act shall be open to appeal under the rules applicable to appeals in the Code of Civil Procedure. The petition of appeal may be written on a stamp paper of the value prescribed for petitions to the Sudder Court.

XXXIV. The expression "Civil Court" as used in this Act shall be held to mean the principal Court of original jurisdiction in the District, and shall not include the 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.

Number.

Gender.

By order of His Excellency the Governor in Council,

L. H. BAYLEY,

Deputy Secretary to Government.

Poona, 5th September 1862.