

INDIAN LUNACY ACT

[ACT No IV of 1912]

An Act to consolidate and amend the law relating to Lunacy-

Whereas it is expedient to consolidate and amend the law relating to lunacy: It is hereby enacted as follows:—

PART I Preliminary

CHAPTER I

1. Short title and extent.—(1) This Act may be called the Indian Lunacy Act, 1912.

(2) It extends to the whole of India.

2. Savings.—Nothing contained in Part II shall be deemed to affect the powers of any High Court over any person found to be a lunatic by inquisition, or over the property of such lunatic, or the rights of any person appointed by such Court as guardian of the person or manager of the estate of such lunatic.

3. Definitions.—In this Act unless there is anything repugnant in the subject or context,—

(1) "asylum" means an asylum or mental hospital for lunatics established or licensed by the Central Government or any State Government ;

(2) "cost of maintenance" in an asylum includes the cost of lodging, maintenance, clothing, medicine and care of a lunatic and any expenditure incurred in removing such lunatic to and from an asylum together with any other charge specified in this behalf by the State Government in exercise of any power conferred upon it by this, Act ;

(3) "District Court" means the principal Civil Court of original jurisdiction in any area outside the local limits for the time being of the Metropolitan towns;

(4) "Criminal lunatic" means any person for whose detention in, or removal to an asylum, jail or other place of safe custody, an order has been made in accordance with the provisions of section 330 or sections 335 and 336 of the Code of Criminal Procedure, 1973 or of section 30 of the Prisoners Act, 1900, or of section 103A of the Indian Army Act, 1911;

(3A) "India" means' the territory of India excluding the State of Jammu and Kashmir;

(5) "lunatic" means an idiot or a person of unsound mind ;

(6) "Magistrate" means a Metropolitan Magistrate, District Magistrate, Sub-divisional Magistrate, or a Magistrate of the first class specially empowered by the State Government to perform the functions of a Magistrate under this Act,;

(7) "medical officer" means a gazetted medical officer in the service of the Government and includes a medical practitioner declared by general or special order of the State Government to be a medical officer for the purposes of this Act ;

(8) "medical practitioner" means holder of a qualification to practice medicine and surgery which can be registered in the United Kingdom in accordance with the law for the time being in force for the registration of medical practitioners, and includes any person declared by general or special order of the State Government to be a medical practitioner for the purpose of this Act ; .

(9) "prescribed" means prescribed by this Act or by rule made thereunder ;

(10) "reception order" means an order made under the provisions of this Act for the reception into an asylum of a lunatic other than a lunatic so found by inquisition ;

(11) "relative" includes any person related by blood marriage or adoption ; and

(12) "rule" means rule made under this Act.

PART II

Reception, Care and Treatment of Lunatics

CHAPTER II Reception of Lunatics

4. *Reception of persons in asylum.*—(1) No person other than a criminal lunatic or a lunatic so found by inquisition shall be received or detained in an asylum without a reception order save as provided by sections 8, 16 and 98 :

Provided that any person in charge of an asylum may, with the consent of two of the visitors of such asylum which consent shall not be given except upon a written application from the intending boarder, receive and lodge as a boarder in such asylum any person who is desirous of submitting himself to treatment.

(2) A boarder received in an asylum under the proviso to sub-section (1) shall not be detained in the asylum for more than twenty-four hours after he has given the person in charge of the asylum notice in writing of his desire to leave such asylum.

Reception Order on Petition

5. *Application for reception order.*—(1) An application for a reception order shall be made by petition accompanied by a statement of particulars to the Magistrate within the local limits of whose jurisdiction the alleged lunatic ordinarily resides, shall be in the form prescribed and shall be supported by two medical certificates on separate sheets of paper, one of which certificates shall be from a medical officer.

(2) If either of the medical certificates is signed by any relative, partner or assistant of the lunatic or of the petitioner, the petition shall state the fact, and where the person signing is a relative, the exact manner in which he is related to the lunatic or petitioner.

(3) The petition shall also state whether any previous application has been presented for an inquiry into the mental capacity of the alleged lunatic in any Court : and if such application has been made, a certified copy of the order made thereon shall be attached to the petition.

(4) No application for a reception order shall be entertained in any area outside the Metropolitan towns unless the State Government has, by notification in the official Gazette, declared such area as an area in which reception orders may be made.

6. Application by whom to be presented.—(1) Subject to the provisions of sub-section (3), the petition shall be presented by the husband or wife of the alleged lunatic or, if there is no husband or wife or the husband or wife is prevented by reason of insanity, absence from India or otherwise from making the presentation, by the nearest relative of the alleged lunatic who is not so prevented.

(2) If the petition is not so presented by the husband or wife, or, where there is no husband or wife, by the nearest relative of the alleged lunatic, the petition shall contain a statement of the reasons why it is not so presented/and of the circumstances under which he presents the petition.

(3) No person shall present a petition unless he has attained the age of majority as determined by the law to which he is subject, and has within fourteen days before the presentation of the petition, personally seen the said lunatic.

(4) The petition shall be signed and verified by the petitioner and the statement of prescribed particulars by the person making such statement.

7. Procedure upon petition for reception order.—(1) Upon the presentation of the petition, the Magistrate shall consider the allegation in the petition and the evidence of lunacy appearing by the certificates.

(2) If he considers that there are grounds for proceeding further, he shall personally examine the alleged lunatic unless-for reasons to be recorded in writing, he thinks it unnecessary or inexpedient so to do.

(3) If he is satisfied that a reception order may properly be made forthwith, he may make the same accordingly.

(4) If he is not so satisfied, he shall fix a date (notice whereof shall be given to the petitioner and to any other person to whom in the opinion of the Magistrate notice should

be given) for the consideration of the petition, and he may make such further or other inquiries of, or concerning, the alleged lunatic as he thinks fit.

8. Detention of lunatic pending enquiry.—Upon the presentation of the petition, the Magistrate may make such order as he thinks fit for the suitable custody of the alleged lunatic pending the conclusion of the enquiry.

9. Consideration of petition.—The petition shall be considered in private in the presence of the petitioner, the alleged lunatic (unless the Magistrate in his discretion otherwise directs), any person appointed by the alleged lunatic to represent him and such other persons as the Magistrate thinks fit.

10. Order.—(1) At the time appointed for the consideration of the petition, the Magistrate may either make a reception - order or dismiss the petition, or may adjourn the same for further evidence or inquiry, and make such order as to the payment of the costs of the inquiry by the person upon whose application it was made, or out of the estate of the alleged lunatic if found to be of unsound mind, or otherwise as he thinks fit.

(2) If the petition is dismissed, the Magistrate shall record in writing his reasons for dismissing the same, and shall deliver or cause to be delivered to the petitioner a copy of such order.

11. Further provisions as to reception orders on petition.—No reception order shall be made under section 7 or section 10, save -in the case of a lunatic who is dangerous and unfit to be at large, unless—

(a) the Magistrate is satisfied that the person in charge of an asylum is willing to receive the lunatic, and

(b) the petitioner or some other person engages in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the lunatic.

¹[11-A. Power to appoint substitute for the person upon whose application a reception order has been made.—(1) The Magistrate may, subject to the provisions of this section, by order in writing (hereinafter referred to as an order of substitution), transfer the duties and responsibilities under this Act of the person on whose petition a reception order has been made to any other person who is willing to undertake the same, and such other person shall thereupon be deemed for the purposes of this Act to be the person on whose petition the reception order was made, and all references in this Act to such last-mentioned person shall be construed accordingly:

¹ Ins. by Act 2 of 1926.

Provided that no such order of substitution shall release the person upon whose petition the reception order was made or, if he is dead, his legal representative from any liability incurred before the order of substitution was made.

(2) Before making any order of substitution, the Magistrate shall send a notice to the person upon whose petition the reception order was made, if he is alive, and to any relative of the lunatic to whom, in the opinion of the Magistrate notice should be given ; the notice shall specify the name of the person in whose favour it is proposed to make such order and the date, which shall be not less than twenty days from the sending of the notice, upon which any objection to the making of the order will be considered.

(3) On such date .or any subsequent date to which the proceeding may be adjourned, the Magistrate shall consider any objection made by any person to whom notice has been sent, or by any other relative of the lunatic, and shall receive all such evidence as may be produced by or on behalf of any of such persons and such further evidence, if any, as the Magistrate thinks necessary, and may thereafter make or refrain from making an order of substitution :

Provided that, if the person on whose petition the reception order was made is dead and any other person is willing and, in the opinion of the Magistrate, fitted to undertake the duties and responsibilities under this Act of such first-mentioned person, the Magistrate shall make such an order.

(4) If in proceedings under this section any question arises as to the person to whom the duties and responsibilities under this Act of a person upon whose petition a reception order has been made shall be entrusted, the Magistrate shall give preference to the person who is the nearest relative of the lunatic, unless, for reasons to be recorded in writing, the Magistrate considers that such preference would not be in the interests of the lunatic.

(5) The Magistrate may make such order for the payment of the costs of an enquiry under this section by any person who is a party thereto or out of the estate of the lunatic, as he thinks fit.

(6) Any notice under sub-section (2) may be sent by post to the last known address of the person of whom it is intended,]

¹[11-B]. **Reception order in case of lunatics from foreign States in India.**— 1) When an arrangement has been made with any foreign European State with respect to the reception of lunatics in asylums in ²[India], the ³[Central Government] may, by notification in the ⁴[official Gazette], direct that reception orders may be made under this

Act in the case of any lunatic or class of lunatics residing in the territories in India of such foreign European State, and shall in such notification specify the ⁴[State or States] within which such reception orders may be made.

(2) On publication of a notification under sub-section (1), the provisions of this Act as to the making of reception orders on petition and for temporary detention in suitable custody shall apply in the case of such lunatics, with the following modifications, namely:

(a) any application for reception order may be made by petition presented by such officer or agent of the foreign State in which the alleged lunatic ordinarily resides, as may by general or special order be approved by the ⁴[State Government] in this behalf ;

(b) the functions of the Magistrate shall be performed by such officer as the ⁴[State Government] may, by general or special order, appoint in this behalf, and such officer shall be deemed to be the Magistrate having jurisdiction over the alleged lunatic for all the purposes of the said provisions;

(c) for the purposes of Sees. 5 and 18(1), the expressions "medical officer" and "medical practitioner" shall include such person or class of persons as the ⁴[State Government] may specify in this behalf;

(d) the Magistrate may in his discretion extend the period prescribed by Sec. 19 within which the alleged lunatic must have been medically examined; and

(e) sections 6 (1), (2), (3), 11, ^A[II-A] and 34 of the Act, shall not apply and with such other modifications, restrictions or adaptations as the ²[Central Government] may, by notification in the ² [official Gazette], direct for the purpose of facilitating the application of the said provisions.

(3) A reception order made under this section shall be deemed to be a reception order made under Sec. 7 or Sec. 10, as the case may be.

Reception Order otherwise than on Petition

12. Reception order in case of an European lunatic soldier, sailor or airman.—

When any European who is subject to the provisions of the ⁸[Army Act (44 & 45 Vict., c. 58)], ⁴[the Naval Discipline Act or that Act as modified by the Indian Navy (Discipline) Act, 1934 (34 of 1934)], ⁵[the Air Force Act] or the ⁶ [Indian Air Force Act, 1932 (14 of 1932)] has been declared a lunatic in accordance with the provisions of the military ⁴[naval] ⁷[or Air Force] regulations in force for the time being, and it appears to any administrative medical officer that he should be removed to an asylum, such administrative medical officer may, if he thinks fit, made a reception order under his hand for

the admission of the said lunatic into any asylum which has been duly authorized for the purpose by the ²[Central Government].

13. Powers and duties of police in respect of wandering or dangerous lunatics or lunatics cruelly treated or not under proper care and control. —

(1) Every officer in charge of a police-station may arrest or cause to be arrested all persons found wandering at large within the limits of his station whom he has reason to believe to be lunatics and shall arrest or cause to be arrested all persons within the limits of his station whom he has reason to believe to be dangerous by reason of lunacy. Any person so arrested shall be taken forthwith before the Magistrate.

(2) Every officer in charge of a police-station who has reason to believe that any person within the limits of his station is deemed to be a lunatic and is not under proper care and control or is cruelly treated or neglected by any relative or other person having the charge of him, shall immediately report the fact to the Magistrate.

14. Reception order in case of wandering and dangerous lunatics.—Whenever any person is brought before a Magistrate under the provision of sub-section (1) of Sec. 13, the Magistrate shall examine such person, and if he thinks that there are grounds for proceeding further, shall cause him to be examined by a medical officer, and may make such other enquiries as he thinks fit; and if the Magistrate is satisfied that such person is a lunatic and a proper person to be detained, he may, if the medical officer who has examined such person gives a medical certificate with regard to such person, make a reception order for the admission of such lunatic into an asylum;

Provided that, if any friend or relative desires that the lunatic be sent to a licensed asylum and engages in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the lunatic in such asylum, the Magistrate shall, if the person in charge of such asylum consents, make a reception order for the admission of the lunatic into the licensed asylum mentioned in the engagement :

Provided further that if any friend or relative of the lunatic enters into a bond with or without sureties for such sum of money as the Magistrate thinks fit, conditioned that such lunatic shall be properly taken care of, and shall be prevented from doing injury to himself or to others, the Magistrate, instead of making a reception order, may, if he thinks fit, make him over to the care of such friend or relative.

15. Order in case of lunatic cruelly treated or not under proper care and control.—

(1) If it appears to the Magistrate on the report of a police officer or the information of any other person, that any person within the limits of his jurisdiction deemed to be a

lunatic is not under proper care and control or is cruelly treated or neglected by any relative or other person having the charge of him, the Magistrate may cause the alleged lunatic to be produced before him, and summon such relative or other person as has or ought to have the charge of him.

(2) If such relative or other person is legally bound to maintain the alleged lunatic, the Magistrate may make an order for such alleged lunatic being properly cared for and treated and if such relative or other person willfully neglects to comply with the said order, the Magistrate may sentence him to imprisonment for a term which may extend to one month.

(3) If there is no person legally bound to maintain the alleged lunatic or if the Magistrate thinks fit so to do, he may proceed as prescribed in section 14 and upon being satisfied in the manner aforesaid that the person deemed to be a lunatic, is a lunatic and a proper person to be detained under care and treatment, may, if a medical officer gives a medical certificate with regard to such lunatic, make a reception order for the admission of such lunatic into an asylum..

16. Detention of alleged lunatic, pending report by medical officer.—(1) When any person alleged to be a lunatic is brought before a Magistrate under the provisions of section 13 or section 15, the Magistrate may, by an order in writing, authorise the detention of the alleged lunatic in suitable custody for such time not exceeding ten days as may be, in his opinion necessary to enable the medical officer to determine whether such alleged lunatic is a person in respect of whom a medical certificate may be properly given.

(2) The Magistrate, from time to time, for the same purpose by order in writing, authorize such further detention of the alleged lunatic for periods not exceeding ten days at a time as he thinks necessary :

Provided (hat no person shall be detained in accordance with the prisons of this section for a total period exceeding thirty days from the date on which he was first brought before the Magistrate.

17. Commissioners of Police, etc. to act in the Metropolitan towns.—All acts which the Magistrate is authorised or required to do by section 14, 15 or 16 may be done in the Metropolitan towns by the Commissioners of Police and all duties which an officer in charge of a police station is authorised or required to perform, may be performed in any of the Metropolitan towns by an officer of the police force not below the rank of an Inspector.

Further provisions as to reception orders and medical certificates

18. Medical certificates.—(1) Every medical certificate under this Act shall be made and signed by a medical practitioner or a medical officer, as the case may be, and shall be in the form prescribed.

(2) Every medical certificate shall state the facts upon which the person certifying has formed his opinion that the alleged lunatic is a lunatic, distinguishing facts observed by himself from facts communicated by others, and no reception order on petition shall be made upon a certificate founded only upon facts communicated by others.

(3) Every medical certificate made under this Act shall be evidence of the facts therein appearing and of the judgment therein stated to have been formed by the person certifying on such facts, as if the matters therein appearing had been verified on oath.

19. Time and manner of medical examination of lunatic.—(1) A reception order required to be founded on a medical certificate shall not be made unless the person who signs the medical certificate, or, where two certificates are required, each person who signs a certificate has personally examined the alleged lunatic, in the case of an order upon petition, not more than seven clear days before the date of the presentation of the petition, and, in all other cases not more than seven clear days before the date of the order.

(2) Where two medical certificates are required, a reception order shall not be made unless each person signing a certificate has examined the alleged lunatic separately from the other.

20. Authority for reception.—A reception order, if the same appears to be in conformity with this Act, shall be sufficient authority for the petitioner or any person authorized by him, or in the case of an order made upon petition, for the person authorized so to do by the person making the order to take the lunatic and convey him to the place mentioned in such order and for his reception and detention therein, or in any asylum to which he may be removed in accordance with the provisions of this Act, and the order may be acted on without further evidence of the signature or of the jurisdiction of the person making the order:

²Provided that no reception order shall continue to have effect—

(a) after the expiry of thirty days from the date on which it was made, unless the lunatic has been admitted to the place mentioned therein that period, or

² Ins by Act 32 of 1923.

(b) after the discharge, under the provisions of this Act, of the lunatic from such place or from any asylum to which he may have been removed.]

21. Copy of reception order to be sent to person in charge of asylum.—Any authority making a reception order under this Part shall forthwith send a certified copy of the order to the person in charge of the asylum into which such lunatic is to be admitted.

22. Restriction as to asylums into which reception order may direct admission.—Subject to the provisions of Sec. 85, no Magistrate shall make a reception order for the admission of any lunatic into ³[any Government asylum] outside the ⁴[State] in which the Magistrate exercises jurisdiction.

23. Detention of lunatics pending removal to asylum.—When any reception order has been made under Sec. 7, 10, 14, or 15, the Magistrate may, for reasons to be recorded in writing, direct that the lunatic, pending his removal to an asylum, be detained in suitable custody in such place as the Magistrate thinks fit.

Reception and detention of criminal lunatics

24. Reception and detention of criminal lunatics.—An order under section 330 or sections 335 and 336 of the Code of Criminal Procedure, 1973. or under section 30 of the Prisoners Act, 1900 or under section 145 of the Army Act, 1950 (46 of 1950) , directing the reception of a criminal lunatic into any asylum which is prescribed for the reception of a criminal lunatic shall be sufficient authority for the reception and detention of any person named therein in such asylum or any other asylum to which he may be lawfully transferred.

Reception after inquisition

25. Reception after inquisition.—A lunatic so found by inquisition may be admitted into any asylum—

(1) in the case of an inquisition under Chapter IV, on an order made by, or under the authority of, the High Court;

(2) in the case of an inquisition under Chapter V, on an order made by the District Court.

26. Order for payment of cost of maintenance of lunatic.—(1) When any lunatic has been admitted into any asylum in accordance with the provisions of Sec. 25, the High Court or the District Court, as the case may be, shall, on the application of the person in charge of the asylum, make an order for the payment of the cost of maintenance of the

³ Subs, by A. O., 1937, for "any asylum established by Government."

⁴ Subs, by A. L. O., 1950.

lunatic of the lunatic in the asylum, and may from time to time direct that any sum of money payable under such order shall be recovered from the estate of the lunatic or of any person legally bound to maintain him :

Provided that if at any time it shall appear to the satisfaction of the Court that the lunatic has not sufficient property, and that no person legally bound to maintain such lunatic has sufficient means for the payment of such cost, the Court shall certify the same instead to making such order for the payment of the cost as aforesaid.

(2) An order under sub-section (1) shall be enforced in the same manner and shall be of the same force and effect and subject to the same appeal as a decree made by the Court in a suit in respect of the property or person therein mentioned.

Amendment of order or certificate

27 Amendment of order or certificate.—If after the reception of any lunatic into any asylum on a reception order, it appears that the order upon which he was received or the medical certificate or certificates upon which such order was made in or defective or incorrect, the same may at any time afterwards be amended by the person or persons signing the same with the sanction of two or more of the visitors of the said asylum, one of whom shall be a medical officer.

CHAPTER III

Care and Treatment

Visitors

28. Appointment of visitors.—(1) The 1[State Government] shall appoint for every asylum not less than three visitors, one of whom at least shall be a medical officer.

(2) The Inspector-General of Prisons (where such office exists) shall be a visitor *ex-officio* of all the asylums within the limits of his jurisdiction.

29. Monthly inspection by visitors.—Two or more of the visitors, one of whom shall be a medical officer, shall, once at least in every month, together inspect every part of the asylum of which they are visitors, and see and examine, as far as circumstances will permit, every lunatic and broader therein, and the order and certificate for the admission of every lunatic admitted since the last visitation of the visitors, and shall enter in a book to be kept for that purpose any remarks which they may deem proper in regard to the management and condition of the asylum and the inmates thereof.

Comment

In England visitors in lunacy commonly referred to as "Chancery visitors" discharge, amongst other functions the duty of visiting lunatics so found by inquisition and also

persons not so found, but with reference to whom proceedings have been taken in lunacy.⁵

30. Inspection of criminal lunatics by Inspector-General or visitors.—(1) When any person is ⁸[detained] under the provisions of Sec. 466 or Sec. 471 of the Code of Criminal Procedure, 1898 (5 of 1898), ⁹[or under the provisions of Sec. 103-A of the "[Indian Army Act, Mi (9 of 1911)J, the Inspector-General of Prisons, if such person is ⁶[detainec] in a jail or the visitors of the asylum or any two of them, if he is "[detained], in an asylum, may visit him m order to ascertain his state of mind ; and he shall be visited once at least in every six months by such Inspector-General or by two of such visitors as aforesaid ; and such Inspector-General or visitors shall make a special report as to the state of mind of such person to the authority under whose order he is [detained].

(2) The ⁷[State Government] may empower the officer-in-charge of the jail in which such person may be 8[detained] to discharge all or any of the functions of the Inspector-Genera! under sub-section (1).

Discharge of lunatics

31. Order of discharge from asylum by visitors.—(1) Three of the visitors of any asylum, of whom one shall be a medical officer, may, by order in writing, direct the discharge of any person detained in such asylum, and such person shall thereupon be discharged :

Provided that no order under this sub-section shall be made in the case of a person detained under reception order under Sec. 12, or, in the case of a criminal lunatic, otherwise than as provided by Sec. 30 of the Prisoners Act, 1900 (3 of 1900).

(2) When such order is made, if the person is detained under the order of any public authority, notice of the order of discharge shall be immediately communicated to such authority.

32. Discharge of lunatics in other cases and of European military lunatics—(1) A lunatic detained in any asylum under a reception order, made on petition, shall be discharged if the person on whose petition the reception order was made so applies in writing to the person in charge of the asylum :

⁵ Halsbury's *Laws of England*, Vol. i9, p. 467.

⁶ Ssubs, by Act 11 of 1923, for "confined".

⁷ Subs, by A. X O. 1950.

Provided that no lunatic shall be discharged under the provisions of sub-section (1) if the officer-in-charge of the asylum certifies in writing that the lunatic is dangerous and unfit to be at large.

(2) A person detained in any asylum under a reception order made under Sec. 12 shall be detained therein until he is discharged therefrom in accordance with the military "[naval] ⁸[or air force] regulations in force for the time being or until the officer making the order applies for his transfer to the military ⁵⁸ [naval] ³[or air force] authorities in view to his removal to England.

(3) Whenever it appears to the officer-in-charge of an asylum that the discharge of a person therein detained under an order made under Sec. 12 is necessary either on account of his recovery, or for any other purpose, such person shall be brought before the visitors of the asylum, and on the visitors recording their opinion that the discharge should be made, the general or other Officer Commanding the division, district, brigade or force, or other officer authorized to order the admission of such persons into an asylum, shall forthwith direct him to be discharged, and such discharge shall take place in accordance with military naval or air force regulations in force for the time being.

33. Order of discharge on undertaking of relative for due care of the lunatic.—

When any relative or friend of a lunatic detained in any asylum under the provisions of Sees. 14, 15 or 17 is desirous that such lunatic shall be delivered over to his care and custody he may make application to the authority under whose order the lunatic is detained, and such authority, if it thinks fit, in consultation with the person in charge of the asylum and with the visitors or with one of them being a medical officer, and upon such relative or friend entering into a bond with or without sureties for such sum of money as the said authority thinks fit conditioned that such lunatic shall be properly taken care of and shall be prevented from doing injury to himself or to others, may make an order for the discharge of such lunatic, and such lunatic shall thereupon be discharged.

STATE AMENDMENTS

Bombay Amendment.—After Sec. 33, the following Sec. 33-A has been added by Bombay Act XV of 1938 3

"33-A. Temporary release of lunatics.—(1) When any relative or friend a lunatic detained in any asylum under the provisions of Sec. 7, or 17 is desirous that such lunatic shall be temporarily released and delivered over to his care and custody, he may make an application to the person in charge of the asylum, who s'llall make an order for the

temporary release of such lunatic for a period not exceeding sixty days, unless for any reason, he considers that such release is undesirable and such lunatic shall thereupon be so released.

(2) No order under sub-section (1) for the temporary release of a lunatic detained under Sec. 7 or 10 shall be passed except on an application of the petitioner on whose petition such lunatic was detained or without the consent in writing of such petitioner :

Provided that, if in any such case, it appears to the person in charge of any asylum that such petitioner refuses, without sufficient reasons, to accord such consent, he shall refer the application made to him under sub-section (1), to the Magistrate who would have jurisdiction to detain such lunatic under Sec. 7 or 10 and such Magistrate may, after making such enquiry as he thinks fit, order the temporary release of such lunatic for the period specified in sub-section (1).

(3) Any order made for the release of a lunatic under sub-section (1) may, on the application of any relative or friend, at any time during the period of his release, be set aside, or varied by the Magistrate who would have jurisdiction to detain such lunatic in an asylum under Sec. 7, 10, 14, 15 or 17 on any ground other than the lunatic was not in a state of mind fit to be released at the time the order for his release was made under sub-section (1). If the order of release is so set aside, the lunatic shall be re-admitted and detained in the asylum.

(4) If a lunatic released under sub-section (1) or (2) is, at any time during the period of his release, found to be unmanageable or dangerous and unfit to be at large, the person who applied for his release may take the lunatic to the asylum, and such lunatic shall thereupon be re-admitted and detained in the asylum.

(5) If a lunatic released under sub-section (1) or (2) does not return to the asylum at the expiration of the period for which he was released and if no order for his discharge has been passed under Sec. 31, or Sec. 33 or if he is at any time during the period of his release, found to be unmanageable or dangerous or unfit to be at large and the person who applied for his release states by a written application to the person in charge of the asylum that he is unable to bring him to the asylum such lunatic shall be deemed to have escaped from the asylum and may at any time within one month after the expiration of the said period be retaken to and detained in the asylum in the manner provided in Sec. 36 :

Provided that such a person shall be deemed to be discharged if on or before the expiry of the period for which he was released, the Board of Visitors is satisfied either (a) as a

result of investigations conducted by the person in charge of the asylum concerned, or (6) on receipt of a certificate signed by a medical practitioner that the person may with safety be discharged."

Madras Amendment.—After Sec. 33, the following Sec. 33-A has been added by Madras Act XV of 1938 as amended by Madras Act 12 of 1943 ;

"33-A. Temporary order of discharge of lunatic in interests of his health. —If the person in charge of any asylum in which a lunatic is detained under the provisions of Sees 14, 15 or 17 is satisfied that in the interests of the in-health of the lunatic, it is necessary to discharge him temporarily, the person aforesaid may order such discharge for such period, as he may think fit, and subject to such conditions as the State Government may by rule prescribe."

34. Discharge of person subsequently found on inquisition not to be of unsound mind.—If any lunatic detained in an asylum on a inception order made under Sec. 7, 10, 14, 15 or 17 is subsequently found on an inquisition under Chapter IV or Chapter V not to be of unsound mind and incapable of managing himself and his affairs, the person in charge of the asylum shall forthwith, on the production of a certified copy of such finding, discharge lunatic from the asylum.

Removal of lunatic

35. Removal of lunatics and criminal lunatics.—(1) ¹[Any lunatic may, in accordance with any general or special order of the [State Government] be removed from any Government asylum to any other asylum within the State, or to any other asylum in any other ²[State], with the consent of the State Government of that State:

Provided that no lunatic admitted into an asylum a reception order made on petition shall be removed in accordance with the provisions of this subsection until notice of such intended removal has been given to the petitioner.

(2) The [State Government] may make such general or special order as [it] thinks fit directing the removal of any person for whose [detention] an order has been made under Sec. 466 or Sec. 471 of the Code of Criminal Procedure, 1898 (5 of 1898) [or under Sec. 103-A of the Indian Army Act, 1911 (8 of 19 J) [from the place where he is for the time being ⁵[detained] to any asylum, jail or other place of safe custody [in the State,] or to any asylum, jail or other place of safety, in any other [State] with the consent of the [State] Government of the [State].

Escape and re-capture.

36. Order to justify detention and re-capture after escape.— Every person received into an asylum under any such order as is required by this Act, may be detained therein until he is , removed or discharged as authorized by law and in the case of escape may, by virtue of such order, be re-taken by any police-officer or by the person in charge of such asylum, or any officer or servant belonging thereto, or any other person authorized in that behalf by the said person in charge, and conveyed to and received and detained in such asylum :

Provided that in the case of a lunatic not being a criminal lunatic or a lunatic in respect of whom a reception order has been made under section 12, the power to re-take such escaped lunatic under this section shall be exercisable only for a period of one month from the date of his escape.

PART III
Judicial Inquisition as to Lunacy
CHAPTER IV
Proceedings in Lunacy in Presidency-towns
Inquisition

37. Jurisdiction in lunacy in Presidency-towns.—The courts having jurisdiction under this Chapter shall be the High Courts of Judicature at Fort William, Madras and Bombay.

Comment

The High Court of Madras having jurisdiction under the Lunacy Act pursuant to Sec. 37 have made rules as provided by Sec. 61 of the Act in order to carry into effect the provisions of Chapter 4 of the Statute.

38. Court may order inquisition as to persons alleged to be insane.—(i) The Court may, upon application, by order direct an inquisition whether a person subject to the jurisdiction of the Court who is alleged to be a lunatic, is of unsound mind and incapable of managing himself and his affairs.

(2) Such order may also contain directions for inquiries concerning the nature of the property belonging to the alleged lunatic, the persons who are his relatives, the time during which he has been of unsound mind, or such other matters as to the Court may seem proper.

39. Application by whom to be made.—Application for such inquisition may be made by any relative of the alleged lunatic, or by the Advocate-General.

Comment

Proof of insanity.—The question of insanity requires a most careful examination and it is difficult to think that bare assertion by witnesses unsupported by any details of the

cause, the course and the treatment of the malady ought to be accepted as satisfactory proof.

40. Notice of time and place of inquisition.—(1) Notice shall be given to the alleged lunatic of the time and place at which it is propose to hold the inquisition.

(2) If it appears that personal service on the alleged lunatic would be ineffectual, the Court may direct such substituted service of the notice as it thinks fit.

(3) The Court may also direct a copy of such notice to be served upon any relative of the alleged lunatic and upon any other person to whom in the opinion of the Court notice of the application should be given.

41. Powers of Court in respect of attendance and examination of lunatic.—(1) The Court may require the alleged lunatic to attend at such convenient time and place as it may appoint for the purpose of being personally examined by the Court, or by any person from whom the Court may desire to have a report of the mental capacity and condition of such alleged lunatic.

(2) The Court may likewise make an order authorizing any person or persons therein named to have access to the alleged lunatic for the purpose of a personal examination.

42. Rules respecting attendance and examination of females alleged to be lunatic.—The attendance and examination of the alleged lunatic under the provisions of Sec. 41 shall, if the alleged lunatic be a woman who, according to the manners and customs of the country, ought not to be compelled to appear in public, be regulated by the law and practice for the examination of such persons in other civil cases.

Comments

Scope.—The section in terms refers only to the attendance and examination of the lunatic in Court but the principle contained in the said section would apply equally to her attendance and examination before a doctor.⁸

Inquiry—Scope of.—The mode of enquiry prescribed in Sees. 40, 41 and 42 is therefore a statutory prescription compelling obedience. These provisions serve great public interest and are necessary for an effective discharge of the duties vested in the Courts.*

43. Power to direct District Court to make inquisition in certain cases.— (1) If the alleged lunatic is not within the local limits of the jurisdiction of the Court, and the inquisition cannot conveniently be made in the manner hereinbefore provided, the Court may direct the inquisition to be made before the District Court within whose local jurisdiction the alleged lunatic may be ; and such District Court shall accordingly proceed to make 'such inquisition in the same manner as if the alleged lunatic were subject to its

jurisdiction, and shall certify its finding upon the matters of inquisition to the Court directing the inquisition.

(2) The record of evidence taken upon the inquisition shall be transmitted, together with any remarks the Court may think fit to make thereon, to the Court by which the inquisition was directed.

44. Amendment of finding of District Court if defective or insufficient in form.—If the finding of the District Court appears to the Court directing the inquisition to be defective or insufficient in point of form it may either amend the same or refer it back to the Court which made the inquisition to be amended.

45. Proceeding on finding of Court.—The finding of the Court on the inquisition or the finding of the District Court to which the inquisition may have been referred under the provisions of Sec. 43 with such amendments as may be made under the provisions of Sec. 44, as the case may be, shall have the same effect, and be proceeded on in the same manner in regard to the appointment of a guardian of the person and a manager of the estate of the lunatic as the findings referred to in Sec. 12 of the Lunacy (Supreme Courts) Act, 1858 (34 of 1858),¹ immediately before the commencement of this Act.

Judicial powers over person and estate of lunatic

46. Custody of lunatics and management of their estates.—(1) The Court may make orders for the custody of lunatics so found by inquisition and the management of their estates.

(2) When upon the inquisition it is specially found that the person to whom the inquisition relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself, and is not dangerous to himself or to others, the Court may make such orders as it thinks fit for the management of the estate of the lunatic including proper provision for the maintenance of the lunatic and of such members of his family as are dependent on him for maintenance, but it shall not be necessary to make any order as to the custody of the person of the lunatic.

47. Powers of manager in respect of management of lunatic's estates—The Court, on the appointment of a manager of the estate of a lunatic, may direct by the order of appointment, or by any subsequent order, that such manager shall have such powers for the management of the estate as to the Court may seem necessary and proper, reference being had to the nature of the property, whether moveable or immoveable, of which the estate may consist;

Provided that no manager so appointed shall without the permission of the Court—

- (a) mortgage, change or transfer by sale, gift, exchange or otherwise, any immoveable property of the lunatic ; or
- (b) lease any such property for a term exceeding five years.

Such permission may be granted subject to any condition or restriction which the Court thinks fit to impose.

48. Power to make order concerning any matter connected with the lunacy.—The Court may, on application made to it by petition concerning any matter whatsoever connected with the lunatic or his estate, make such order, subject to the provisions of this Chapter, respecting the application, as in the circumstances it thinks fit.

Management and administration

49. Power to dispose of lunatic's property for certain purposes.—The Court may, if it appears to be just or for the lunatic's benefit, order that any property, moveable or immovable, of the lunatic, and whether in possession, reversion, remainder, or contingency, be sold, charged, mortgaged, dealt with or otherwise disposed of as may seem most expedient for the purpose of arising or securing or repaying with or without interest money to be applied or which has been applied to all or any of the following purposes, namely :

- (1) the payment of the lunatic's debts or engagements ;
- (2) the discharge of any incumbrance on his property ;
- (3) the payment of any debt or expenditure incurred for the lunatic's maintenance or otherwise for his benefit ;
- (4) the payment of or provision for the expenses of his future maintenance and the maintenance of such members of his family as are dependent on him for maintenance, including the expenses of his removal to Europe, if he shall be so removed, and all expenses incidental thereto;
- (5) the payment of the costs of any enquiry under this Chapter, and of any costs incurred by order or under the authority of the Court.

50. Execution of conveyances and powers by manager under order of Court.—(1) The manager of the lunatic's estate shall, in the name of and on behalf of the lunatic, execute all such conveyances and instruments of transfer relative to any sale, mortgage or other disposition of his estate as the Court may order.

(2) Such manager shall, in like manner, under the order of the Court, exercise all powers whatsoever vested in a lunatic, whether the same are vested in him for his own benefit or in the character of trustee or guardian:

51. Court may order performance of contract.—Where a person, having contracted to sell or otherwise dispose of his estate or any part thereof, afterwards becomes lunatic, the Court may, if the contract is such as the Court thinks ought to be performed, direct the manager of the estate to execute such conveyances and to do such other acts in fulfillment of the contract as it shall think proper.

52. Dissolution and disposal of property of partnership on a member becoming lunatic.—(1) Where a person, being a member of a partnership firm, is found to be a lunatic, the Court may, on the application of the other particulars, or of any person who appears to the Court to be entitled to require the same, dissolve the partnership.

(2) Upon such dissolution, or upon a dissolution by decree of Court or otherwise by due course of law, the manager of the estate may, in the name and on behalf of the lunatic, join with the other partners in disposing of the partnership property upon such terms, and shall do all such acts for carrying into effect the dissolution of the partnership as the Court shall think proper.

53. Disposal of business premises.—Where a lunatic has been engaged in business the Court may, if it appears to be for the lunatic's benefit that the business premises should be disposed of, order the manager of the estate to sell and dispose of the same, and the moneys arising from such sale shall be applied in such manner as the Court may direct.

54. Manager may dispose of lease.—Where a lunatic is entitled to a lease or under-lease, and it appears to be for the benefit of his estate that it should be disposed of, the manager of the estate may, by order of the Court surrender assign or otherwise dispose of the same to such person for such valuable or nominal consideration, and upon such terms, as the Court thinks fit.

55. Assumption of charge by Court of Wards of land belonging to a lunatic in certain cases.—If a lunatic is possessed of any immoveable property situate beyond the local limits of the jurisdiction of the Court which, by the law in force in the ^x[State] wherein such property is situated, subjects the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the said Court of Wards may assume the charge of such property and manage the same according to the law for the time being in force for such management:

Provided that—

- (1) in such case, no further proceedings in respect of the lunacy shall be taken under any such law, nor shall it be competent to the Court of Wards or to any

Collector to appoint a guardian of the person of the said lunatic or a manager of the_ estate except of the immoveable property which so subjects the proprietor as aforesaid ;

(2) the surplus of the income of such property, after providing for the payment of the Government revenue and expenses of management, shall be disposed of from time to time in such manner as the High Court may direct;

(3) nothing contained in this section shall effect the powers given to the High Court by Sees. 49, 50 and 51 or (except so far as relates to the management of the said immoveable property which so subjects the proprietor as aforesaid) the powers given by any other section.

56 Power to apply property for lunatic's maintenance without appointing manager in certain cases.—

(1) If it appears to the Court having regard to the situation and condition in life of the lunatic and his family and the other circumstances of the case to be expedient that his property should be made available for his or their maintenance in a direct and inexpensive manner it may instead of appointing a manager of the estate, order that the property if money or if of any other description the produce thereof when realized, be paid to such person as the Court may think fit, to be applied for the purpose aforesaid.

(2) The receipt of the person so appointed shall be a valid discharge to any person who pays any money or delivers any property of the lunatic to such person.

Vesting orders

57. Power to order transfer of stock belonging to lunatic in certain cases.—Where any stock or Government securities or any share in a company (transferable within [India] or the dividends of which are payable there) is or are standing in the name of, or vested in, a lunatic, beneficially entitled thereto, or in a manager of the estate of a lunatic, or in a trustee for him, and the' manager dies intestate, or himself becomes lunatic, or is out of the jurisdiction of the Court, or it is uncertain whether the manager is living or dead, or he neglects or refuses to transfer the stock, securities or shares, or to receive and pay over thereof the dividends to a new manager or as the Court directs, within fourteen days after being required by the Court to do so, then the Court may order some fit person to make such transfer, or to transfer the same and to receive and pay over the dividends in such manner as the Court directs.

58, Power to order transfer of stock of lunatic residing out of India and the United Kingdom,—Where any such stock or Government securities or share in a company is or

are standing in the name of, or vested in, any person residing out of * [India] and not in any part of the United Kingdom, the Court upon being satisfied that such person has been declared lunatic, and that his personal estate has been vested in a person appointed for the management thereof, according to the law of the place where he is residing, may order some fit person to make such transfer of the stock, securities or shares or of any part thereof, to or into the name of the person so appointed or otherwise, and also to receive and pay over the dividends and proceeds as the Court thinks fit.

General

59. Power to apply property for lunatics maintenance in case of temporary lunatic.—If it appears to the Court that the unsoundness of mind of a lunatic is in its nature, temporary and that it is expedient to make temporary provision for his maintenance or for the maintenance of such members of his family as are dependent on him for their maintenance, the Court may, in like manner as under Sec. 56. direct his property or a sufficient part of it to be applied for the purpose aforesaid.

60. Proceedings in lunacy to cease or to be set aside if Court finds that the unsoundness of mind has ceased.—(1) When any person has been found under this Chapter to be of unsound mind and it is subsequently shown to the Court that there is reason to believe that such unsoundness of mind has ceased, the Court make an order for inquiring whether such person is still of unsound mind and incapable of managing himself and his affairs.

(2) The inquiry shall be conducted as far as may be in the manner prescribed in this Chapter for an inquisition into the unsoundness of mind of an alleged lunatic ; and if it is found that the unsoundness of mind has ceased, the Court shall order all proceedings in the lunacy to cease, or to the set aside on such terms and conditions as to the Court may deem fit.

61. Power of Court to make rules.—The Court may, from time to time, make rules for the purpose of carrying into effect the provisions of this Chapter in matters of lunatic.

CHAPTER V

Proceedings in Lunacy outside Presidency-towns

Inquisition

Comment

All orders passed under Chapter V are appealable.—There is no provision in Chapter V, Lunacy Act, for the removal of a guardian or manager of a lunatic when the

lunatic dies. In this respect, the provisions of the Lunatic Act resemble those of the Guardians and Wards Act. But a manager can continue only so long as the lunatic is alive. When the lunatic dies, the lunacy jurisdiction comes to an end and the Court must pass some order about the property in the hands of the manager. If the title to the property be in dispute, the Court may either decide the issue or ask the manager to file an inter-pleader suit. But whichever course is followed, the order of the Court will be referable to the jurisdiction exercised over the property of the lunatic under Chapter V and the order must be deemed to be an order under that Chapter. Under Sec. 83 of the Lunacy Act and appeal lies against an order made under Chapter Y of the Act. Section 83 of the Lunacy Act is different from Sec 47, Guardians and Wards Act. In the latter Act only orders passed under certain sections of the Act are appealable. Section 83 of the Lunacy Act, does not enumerate the order which alone are appealable but makes all orders passed under Chapter Y appealable to the High Courts.¹

62. Power of District Court to institute inquisition as to person alleged to be lunatic.—Whenever any person not subject to the jurisdiction of any of the courts mentioned in Sec. 37 is possessed of property and is alleged to be a lunatic the District Court, within whose jurisdiction such person is residing may, upon application, by order direct an inquisition for the purpose of ascertaining whether such person is of unsound mind and incapable of managing himself and his affairs.

63. Application by whom to be made.—(1) Application for such inquisition may be made by any relative of the alleged lunatic or by any public Curator appointed under the Succession (Property Protection) Act, 1841 (19 of 1841)² (hereinafter referred to as the Curator), or by the Government pleader, as defined in the Code of Civil Procedure, 1908 (5 of 1908), or if the property of the alleged lunatic consists in whole or in part of land or any interest in land, by the Collector of the District in which it is situate.

(2) If the property or any part thereof is of such a description that it would by the law in force in any State where such property is situate subject the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the application may be by Collector on behalf of the Court of Wards.

64. Regulation of proceedings of District Court.—The provisions of Sees. 40, 41 and 42 shall regulate proceedings of the District Court with regard to the matters to which they relate.

65. Inquisition by District Court and finding thereon.—(1) The District Court, if it thinks fit may appoint two or more persons to act as assessor to the Court in the said inquisition.

(2) Upon the completion of the inquisition, the Court shall determine whether the alleged lunatic is of unsound mind and incapable of managing himself and his affairs or may come to a special finding that such alleged lunatic is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others.

66. Inquisition by subordinate Court on commission issued by District Court and proceedings thereon.—(1) If the alleged lunatic resides at a distance of more than fifty miles from the place where the District Court is held to which the application is made, the said Court may issue a commission to any subordinate Court to make the inquisition, and such subordinate Court shall

67. Custody of lunatics and management of their estates.—(1) The Court may make orders for the custody of lunatics so found by inquisition and the management of their estates.

(2) When upon the inquisition it is specially found that the person to whom the inquisition relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others, the Court may make such orders as it thinks fit for the management of the estate of the lunatic including proper provisions for the maintenance of the lunatic and of such members of his family as are dependent on him for maintenance, but it shall not be necessary to make any order as to the custody of the person of the lunatic.

68. Court of Wards to be authorized in certain cases to take charge of estate of lunatic—If the estate of a lunatic so found or any part thereof consists of property which, by the law for time being in force, subjects the proprietor if disqualified, to the jurisdiction of the Court of Wards, the Court of Wards shall be authorized to take charge of the same.

69. Power to direct Collector to take charge of person and estate of lunatic in certain cases. — (1) If the estate of a lunatic so found consists in whole or in part of land or any interest in land, but is not of such a nature that it would subject the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the District Court may direct the Collector to take charge of the person and estate of the lunatic :

Provided that no such order shall be made without the consent of the Collector previously obtained.

(2) The Collector shall thereupon appoint a manager of the estate, and may appoint a guardian of the person of the lunatic.

70. Control over proceedings of Collector.—All proceedings of the Collector in regard to the person or estate of a lunatic under this Chapter shall be subject to the control of the ²[State] Government or of such authority as it may appoint in this behalf.

71 Power to District Court to appoint guardian and manager and take security from manager.—(1) In all other cases the District Court shall appoint a manager of the estate of the lunatic and may appoint a guardian of his person;

Provided that a District Court may, instead of appointing a manager of the estate of a lunatic, exercise any of the powers conferred on the High Court under Sees. 56 and 59.

(2) Any person who has been appointed by the District Court or Collector to manage the estate of a lunatic shall, if so required, enter into a bond in such form and with such sureties as to the Court or the Collector, as the case may be, may seem fit, engaging duly to account for what he may receive in respect of the property of the lunatic.

72. Restriction on appointment of legal heir of lunatic to be guardian of his person.—The legal heir of a lunatic shall not be appointed to be the guardian of the person of such lunatic unless the Court or the Collector as the case may be for reasons to be recorded in writing, considers that such an appointment is for the benefit of the lunatic.

73. Remuneration of managers and guardians.—A guardian of the person of a lunatic or a manager of his estate appointed under this chapter shall be

74. Duties of guardian.—(1) The person appointed to be guardian of a lunatic's person shall have the care of his person and maintenance.

(2) When a distinct guardian is appointed, the manager shall pay to the guardian such allowance as may be fixed by the District Court or the Collector, as the case may be, for the maintenance of the lunatic and such members of his family as are dependent on him for their maintenance.

75. Powers of managers.—(1) Every manager of the estate of a lunatic appointed as aforesaid may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a lunatic, and may collect and pay all just claims, debts, and liabilities due to or by the estate of the lunatic :

Provided that no manager so appointed shall without the permission of the Court—(a) mortgage, charge, or transfer by sale, gift, exchange or otherwise any immoveable property of the lunatic,

(b) lease any such property for a term exceeding five years.

Such permission may be granted subject to any condition or restriction which the Court thinks fit to impose.

(2) Before granting any such permission, the Court may cause notice of the application for such permission to be served on any relative or friend of the lunatic, and may make or cause to be made such inquiries as to the Court may deem necessary in the interests of the lunatic.

76. Manager to furnish inventory and annual accounts.—(1) Every person appointed by the District Court or by the Collector to be manager of the estate or a lunatic shall, within six months from the date of his appointment, deliver in Court or to the Collector annually within three months of the close of the year property belonging to the lunatic and of all such money, or other moveable property, as he may receive on account of the estate, together with a statement of all debts due or to the same.

(2) Every such manager shall also furnish to the Court or to the Collector annually, within three months of the close of the year of the era current in the district, an account of the property in his charge, exhibiting the sums received and disbursed on account of the estate and the balance remaining in his hands.

77. Proceeding if accuracy of inventory of accounts is impugned—If any relative of the lunatic, or the Collector by petition to the Court, impugns the accuracy of the said inventory and statement, or of any annual account, the Court may summon the manager and inquire summarily into the matter and make such order thereon as it thinks fit ; or the Court, at its discretion, may refer any such petition to any subordinate Court or to the Collector if the manager was appointed by the Collector.

78 Payment into public treasury and investment of proceeds of estate.—All sums received by a manager on account of any estate in excess of what may be required for the current expenses of the lunatic or of the estate, shall be paid into the -public treasury on account of the estate and shall be invested from time to time in any of the securities specified in Sec. 20 of the Indian Trusts Act, 1882 (2 of 1882), unless, the Court or the Collector, as the case may be, for reasons to be recorded in writing, directs that such sums be in the interest of the lunatic otherwise invested or applied.

79. Relative may sue for an account.—Any relative of a lunatic may with the leave of the District Court sue for an account from any manager appointed under this chapter, or from any such person after his removal from office or trust, or from his legal 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.

80. Removal of managers and guardians. -(1) The District Court, for any sufficient cause, may remove any manager appointed by it not being the Curator, and may appoint such Curator or any other fit person in his place, and may compel the person so removed to make over the property in his hands to his successor, and to account to such successor for all money received or disbursed by him.

(2) The Court may also for any sufficient cause, remove any guardian of the person of the lunatic appointed by it, and may appoint any other fit person in his place.

(3) The Collector, for any sufficient cause, may remove any manager of the estate of a lunatic or guardian of the person of a lunatic appointed by him, and may appoint any other fit person in place of such manager or guardian; and the District Court, on the application of the Collector, may compel any manager removed under this section to make over the property and all accounts in his hands to his successor for all money received or disbursed by him.

81. Penalty on manager for refusing to deliver accounts or property.—The District Court may impose a fine not exceeding five hundred rupees on any manager of the estate of a lunatic who wilfully neglects or refuses to deliver his accounts or any property in his hands within the time fixed by the Court, and may realize such fine as if it were a sum due under a decree of the Court, and may also commit the recusant to the civil jail until he delivers such accounts or property.

82. Proceedings in lunacy to cease or to be set aside if the court finds that the unsoundness of mind has ceased.-(1) When any person has been found under this chapter to be of unsound mind and it is subsequently shown to the District Court that there is reason to believe that such unsoundness of mind ceased, such Court may make an order for inquiring whether such person is still of unsound mind and incapable of managing himself and his affairs.

(2) The inquiry, shall, as far as may be, be conducted in the same manner as if prescribed in this chapter for an inquisition into the unsoundness of mind of an alleged lunatic, and if it is found that the unsoundness of mind ceased, the Court shall order all

proceedings in the lunacy to cease or to be set aside on such terms and conditions as to the Court may seem fit.

83. Appeals.—An appeal shall lie to the High Court from any order made by a District Court, under this chapter.

PART IV

Miscellaneous

CHAPTER VI

Establishment of Asylums

84. State Government may establish or licence the establishment of asylums. -The ^a[State] Government may establish or licence the establishment of asylums at such places as it thinks fit ³[if it is satisfied that provision has been or will be made for the curative treatment therein of persons suffering from mental diseases.]

84-A. Power to cancel licence if provision for curative treatment is insufficient.—If in any licensed asylum no provision for curative treatment has been made, or the State Government considers that the provision made is insufficient, the State Government may require the person in charge of the asylum to take such measures for making or supplementing such provision as it may deem necessary, and, if such person does not comply with the requisition within a reasonable time, the State Government may revoke licence.]

85. Provision for admission of lunatics in asylums outside a State.—The Magistrates or courts exercising jurisdiction in any State may send lunatics or any class of lunatics to any asylum situate in any other State in accordance with any general or special order of the State Government made in that behalf with the consent of the State Government of such other State.]

CHAPTER VII

Expenses of Lunatics

86. Payment of cost of maintenance in licensed asylums in certain cases by Government.—(1) When any lunatic is admitted to a licensed asylum under a reception order or an order under Sec. 25, and no engagement has been taken from the friends or relatives of the lunatic or order made by the Court for the payment of expenses under the provisions of this Act, the cost of maintenance of such lunatic shall, subject to the provision of any law for the time being in force, be paid by the Government to the person in charge of such asylum.

(2) The paymaster of the military circle within which any asylum is situated shall pay to the officer-in-charge of such asylum the cost of maintenance of every lunatic received and detained therein under an order made under Sec. 12.

87. Application of property in the possession of a lunatic found wandering.—Any money in the possession of a lunatic found wandering at large may be applied by the Magistrate towards the payment of the cost of maintenance of the lunatic or of any other expenses incurred on his behalf, and any moveable property found on the person of the lunatic may be sold by the Magistrate, and the proceeds thereof similarly applied.

88. Application to Civil Court for order for the payment of cost of maintenance out of the lunatic's estate, or by person bound to maintain him.—

If a lunatic detained in an asylum on a reception order made under Sec. 14, Sec. 15 or Sec. 17 has an estate applicable to his maintenance, or if any person legally bound to maintain such lunatic has the means to maintain him, the authority which made the reception order or any local authority liable for the cost of maintenance of such lunatic under any law for the time being in force may apply to the High Court or District Court within the local limits of the original jurisdiction of which the estate of the lunatic is situate or the person legally bound to maintain him resides, for an order for the payment of the cost of maintenance of the lunatic.

Bombay Amendment.—In the State of Bombay, the following amendments have been made in Sec. 88 by Bombay Act XV of 1936 j

(i) after the words "has the means to maintain him", the words "or if any local authority is liable for the cost of maintenance of such lunatic under any law for the time being in force", shall be inserted ;

(ii) the words "or any local authority liable for the cost of maintenance of such lunatic under any law for the time being in force", shall be omitted;

(iii) after the word "resides" the words "or the local authority liable for the cost of maintenance is constituted" shall be inserted ;

(iv) at the end of the original note, the following shall be added, namely:

"or by local authority liable for such costs".

Madras Amendment .—In Sec. 88, the following amendments have been made by Madras Act XV of 1938 :

The words and figures "on a reception order made under Sec. 14, Sec. 15 or Sec. 17" have been substituted by the words and figures "on a reception order made under Sec. 7, 10, 14, 15 or 17 or on an order under Sec. 8 or 16" and the

words "authority which made the reception order" have been substituted by "authority which made the reception or other order aforesaid".

89. Order of Court and enforcement.—(1) The Court shall inquire into the matter in a summary way, and on being satisfied that such lunatic has an estate applicable to his maintenance, or that any person is legally bound to maintain and has the means of maintaining such lunatic, may make an order for the recovery of the cost of maintenance of such lunatic, together with the costs of the application out of such estate or from such person.

(2) Such order shall be enforced in the same manner, and shall be of the same force and effect and subject to the same appeal as a decree made by the said Court in a suit in respect of the property or person therein mentioned.

Bombay Amendment.—In Sec. 89, the following amendments were made by Bombay Act XV of 1938 :

(i) In sub-section (1)—

(a) after the words "such lunatic" where they occur for the second time, the words "or that any local authority is liable for the cost of maintenance of such lunatic under any law for the time being in force" shall be inserted ;

(b) after the words "such person", the words "or from such local authority" shall be added;

(c) at the end, the following proviso shall be added, namely :

"Provided that no order for the recovery of the cost of maintenance of such lunatic from a local authority shall be made if he has an estate applicable to the maintenance or if there is any person legally bound, and having the means, to maintain him ;"

(ii) in sub-section (2), after the word "person", the words "or the local authority" shall be inserted.

Madras Amendment.—In Sec. 89, the following amendment were made by Madras Act XV of 1938 :

In sub-section (1), for the words "may make order.....from such person", the following have been substituted, namely: "may make an order for the recovery of the whole or any portion of the cost of maintenance of such lunatic and of the costs of the application, out of such estate or from such person:

Provided that an order directing recovery out of such estate shall be made only after making due allowance for the needs of the wife, children and other dependents, if any, of the lunatic."

89-A. Fixation of costs of maintenance.—(1) In computing the amount payable on account of the costs of maintenance of lunatic detained in any asylum for the cost of whose maintenance any State Government is liable, charges may be included on account of the upkeep of the asylum of the capital cost of establishment thereof.

(2) In the case of any such lunatic under detention immediately before the commencement of Part III of the Government of India Act, 1935 (26 Geo. 5 c. 2), the amount payable by [State] Government on account of the cost of his maintenance shall be determined in accordance with any general or special orders of the [President-in-Council] in force immediately before that date and applicable to his case.

¹**[89-B. Incidence of costs of maintenance payable by Government.**—(1) When under the provisions of this Act the cost of the maintenance of a lunatic is payable by the Government, then such cost shall be payable—

(a) in the case of a lunatic not domiciled in ²[India] by the State Government of the State in which the reception order or the order under Sec. 25, as the case may be, was made ; and

(b) in the case of a lunatic domiciled in "[India], by the State Government of the State in which the lunatic has last resided for a period of five years before the reception order or the order under Sec. 25, as the case may, be, was made; or, if the lunatic has not been resident in any one State for such period, by the State Government of the State in which such order was made.

* * *

90. Saving of liability of relatives to maintain lunatic.—The liability of any relative or person to maintain any lunatic shall not be taken away or affected by any provision contained in this Act.

CHAPTER VIII

Rules

91. Power of State Government to make rules.—(1) [* * * *] The State Government may make rules for all or any of the following purposes, namely 5

(a) to prescribe forms for any proceeding under this Act other than a proceeding before a High Court [* * *];

(b) to prescribe places of detention and regulate the care and treatment of persons detained under Sec. 8 or Sec. 16 ;

(c) to regulate the detention, care, treatment and discharge of criminal lunatics ;

- (d) to regulate the management of asylums and the care and custody of the inmates thereof and their transfer from one asylum to another ;
- (e) to regulate the transfer of criminal lunatics to asylums ;
- (f) to prescribe the procedure to be allowed by District Courts and Magistrate before a lunatic is sent to any asylum established by Government;
- (g) to prescribe the Government asylums] within the State to which lunatics from any area or any class of lunatics shall be sent;
- (h) to prescribe conditions subject to which asylum may be licensed ;
- (i) save as otherwise provided in this Act, generally to carry into effect the provisions of the Act.

92. Publication of rules.—All rules made under Sec. 91 shall be published in the official Gazette, and shall thereupon have effect as if enacted in this Act.

93. Penalty for improper reception or detention of lunatics. — Any person who—

- (a) otherwise than in accordance with the provisions of this Act receives or detains a lunatic or alleged lunatic in an asylum, or
- (b) for gain detains two or more lunatics in any place not being an asylum, shall be punishable with imprisonment which may extend to two years or with fine or with both.

94. Provision as bonds.—The provisions of sections 445 to 450 (both inclusive) of Chapter XXXIII of the Code of Criminal Procedure, 1973, shall, so far as may be, apply to bonds taken under this Act.

97. Protection to persons acting under Act.—No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

98. Power to give effect to warrants and orders of certain Courts outside India.—Any officer in charge of an asylum may give effect to any order or warrant for the reception and detention of any lunatic made or issued by any Court or tribunal beyond the limits of India established or continued by the Central Government.

99. Power to make rules for reception of lunatics received from outside India.—The State Government may make rules regulating the procedure for the reception and detention in asylums in [the State] of lunatics whose reception and detention are provided for by Sec. 98.

100. Orders under repealed Acts.—(1) In the case of orders made before the commencement of this Act under Sec. 7 of the Indian Lunatic Asylums Act, 1858 (36 of

1858), for the reception of persons into an asylum, the persons who signed the order shall have all the powers and be subject to the obligations by this Act conferred or imposed upon the petitioner for a reception order, and the provisions of this Act relating to persons upon whose petition a reception order was made shall apply in the case of a person who has signed an order, under Sec. 7 of the Indian Lunatic Asylums Act, 1858 (36 of 1858), before the commencement of this Act as if the order had been made after the commencement of this Act upon a petition presented by him.

(2) All orders for the detention of lunatics made and all undertakings given under any enactment hereby repealed shall have the same force and effect as if they had been made or given under this Act and by or to the authority empowered thereby in such behalf.

100-A. Ranchi European Mental Hospital.—*[Repealed by the A. L. O, 1950].*

101. Repeal of enactments.—*[Repealed by the Second Repealing and Amending Act, 1914 {XVII of 1914}, Sec. 3 and Sch. II].*

**SCHEDULE I
FORM I**

(See Sec. 96)

Application for Reception order

(See Sees. 5 and 6)

In the matter of A. B. [¹] residing at....., by occupation....., son of....., a person alleged to be a lunatic.

To.....Presidency Magistrate, for..... [or District Magistrate of....., or Sub-Divisional Magistrate of.....or Magistrate specially empowered under Act IV of 1912 for.....].

The petition of C. D. [¹], residing at....., by occupation....., son of..... in the town of..... [or sub-division of.....in the district of.....]

1. I am..... [²] years of age.

2. I desire to obtain an order for the reception of A.B. as a lunatic in the.....asylum of.....situate at [3].

3. I last saw the said A. B. at.....on the..... [day of.....

4. I am the..... [⁶] of the said A. B.

[or if the petitioner is not relative of the patient state as follows;]

I am not a relative of the said A. B. The reason why this petition is not presented by a relative are as follows: [State them].

The circumstances under which this petition is presented by me are as follows: [State them]

5. The persons signing the medical certificates which accompany the petition are [⁷].

6. A statement of particulars relating to the said *A. B.* accompanies this petition.
7. [*if that is the fact.*] An application for an enquiry into the mental capacity of the said *A. B.* was made to the.....on the.....and a certified copy of the order made on the said petition is annexed hereto.

[Or if that is the fact]

No application for an enquiry into the mental capacity of the said *A. B.* has been made previous to this application.

The petitioner therefore prays that a reception order may be made in accordance with the foregoing statement.

(Sd.) *C. D.*

The statements contained or referred to in paragraph.....are true to my knowledge; the other statements are true to my information and belief.

(Sd.) *C. D.*

Dated:

Statement of particulars

[If any of the particulars in this statement is not known, the fact to be so stated.]

The following is a statement of particulars relating to the said *A. B.*:

Name of patient at length.

Sex and age.

Married, single or widowed.

Previous occupation.

Caste and religious belief, as far as known.

Residence at or immediately previous to the date hereof.

Names of any near relatives to the patient who are alive.

Whether this is first attack of lunacy.

Age (if known) on first attack.

When and where previously under care and treatment as a lunatic.

Duration of existing attack.

Supposed cause.

Whether the patient is subject to epilepsy.

Whether suicidal.

Whether the patient is known to be suffering from phthisis or any form of tubercular disease.

Whether dangerous to others, and in what way.

Whether any near relative (stating the relationship) has been afflicted with insanity.
Whether the patient (is addicted to alcohol, or the use of opium, *ganja, char as, bhang,*
cocaine or other intoxicant.

[The statements contained or referred to in paras.....are true to my
knowledge. The other statements are true to my information and belief.]

Signature by person making the statement.]

1. Full name, caste and titles.
2. Enter the number of completed years. The petitioner must be at least eighteen or twenty-one whichever is the age of majority under the law to which the petitioner is subject.
3. Insert full description of the name and locality of the asylum or the name, address and description of the person in charge of the asylum.
4. A day within 14 days before the date of the presentation of the petition is requisite.
5. Here state the relationship with the patient.
7. Here state whether either of the persons, signing the medical certificate is a relative, partner or assistant of the lunatic or of the petitioner and, if a relative of either, the exact relationship.

FORM 2

Reception Order on Petition

(See Sees. 7, 10)

I, the undersigned *E. F.*, being a Presidency Magistrate of.....[or the District Magistrate of.....*or* sub-divisional Magistrate or a Magistrate of the first class specially empowered by Government to perform the functions of a Magistrate under Act IV of 1912] upon the petition of *C. D.*, of [1] in the matter of *A.B.* [1] a lunatic, accompanied by the medical certificates of *G. H.*, a medical officer, and of *J. K.*, a medical practitioner *or* medical officer, under the said Act, hereto annexed, hereby authorize you to receive the said *A. B.* into your asylum. And I declare that I have [*or* have not] personally seen the said *A. B.*, before making this order.

(Sd.) *E. F.*

(*Designation as above.*)

To[2]

FORM 3

Medical Certificate

(See Sees. 18, 19)

In the matter of *A. B.* of [3].....in the town of.....[or the sub-division of.....in the district of.....] an alleged lunatic.

I, the undersigned *C. D.*, do hereby certify as follows:

gazetted medical officer [or a medical practitioner declared by Government under Act IV of 1912]

1. I am _____
a holder of [⁴] [or declared by ⁵[State] Government to be a medical practitioner under Act IV of 1912]
and I am in the actual practice of the medical profession.

1. Address and description.
2. To be addressed to the officer or person in charge of the asylum.
3. Insert residence of patient.
4. Insert qualification to practice medicines and surgery registrable in the United Kingdom.
5. Subs, by A.L.O., 1950.

Town

2. On the.....day of 19 _____ at [¹] in the-----of [or village the sub-division of.....in the district of.....] [separately from any other practitioner] [²], I personally examined the said A. B. and came to the conclusion that the said A. B. is a lunatic and a proper person to be taken charge of and detained under care and treatment.

3. I formed this conclusion on the following grounds, viz.

(a) Facts indicating insanity observed by myself, viz.:

(b) Other facts (if any) indicating insanity communicated to me by other, viz. [*Here state the information and from whom.*]

(Sd.) C. D.
(Designation as
above.)

FORM 4

Reception Order in case of lunatic soldier

(See Sec. 12)

Whereas it appears to me that A. B., a European, subject to the Army Act, who has been declared a lunatic in accordance with the provisions of the military regulations, should be removed to an asylum, I do hereby authorize you to receive the said A. B. into your asylum.

(Sd.) E.F.
(Administrative Medical Officer.)

To[³]

FORM 5

Reception Order in case of wandering or dangerous lunatics or lunatics not under proper control or cruelly treated (sent to an asylum established by Government)

(See Sees. 14, 15, 17)

I, *C. D.*, Presidency Magistrate of..... [*or* Commissioner of Police for] [*or* the District Magistrate of *or* the Sub-Divisional Magistrate of*or* a Magistrate specially empowered by Government under Act IV of 1912] having caused *A. B.* to be examined by *E. F.*, a Medical Officer under the Indian Lunacy Act, 1912, being satisfied that *A.B.* [*describing him*] is a lunatic who was wandering at large ; [*or* is a person dangerous by reason of lunacy] [*or* is a lunatic not under proper care and control *or* is cruelly treated or neglected by the person having the care or charge of him] and a proper person to be taken charge of and detained under care and treatment, hereby direct you to receive the said *A. B.* into your asylum.

(Sd.) *C. D.*

(*Designation as above*)

Dated the.....

To the Officer-in-charge of the asylum at.....

1. Insert place of examination.
2. Omit this where only one certificate is required.
3. To be addressed to the person in charge of an asylum duly authorized by Government to receive lunatic Europeans subject to the Army Act.

FORM 6

Same when sent to a licensed asylum

I, *C. D.*, [*as above laid down to "care and treatment"*] and being satisfied which the engagement entered into in writing by *G. H.* of [*here insert address and description*] who has desired that the said *A. B.* may be sent to the asylum at [*here insert description of asylum end name of the person in charge*] to pay the cost of maintenance of the said *A. B.*, in the said asylum, hereby authorize you to receive the said *A. B.* into your asylum.

(Sd.) *C. D.*

(Designation as above.)

Dated the.....

To the person in charge of asylum at

FORM 7
Bond on the making over of a lunatic to the care of relative or friend
(See Sees. 14, 15, 17)

Whereas A, B, son of, inhabitant of..... has been brought up before C. D., a Presidency Magistrate for the town of..... [or Commissioner of Police for] [or the District/ Sub-Divisional Magistrate of..... or a Magistrate of the first class specially empowered under Act IV of 19121 and is a lunatic who is believed to be dangerous [or deemed to be a lunatic who is not under proper care and control or is cruelly treated or neglected by the person having the charge of him] and whereas I, E. F., son of....., inhabitant of.....have applied to the Magistrate [or Commissioner of Police], that the said A. B., may be delivered to my care.

E. F., above named hereby bind myself that on the said A. B., being made over to my care, I will have the said A. B. properly taken care of and prevented from doing injury to himself or to others; and in case of my making default therein, I hereby bind myself to forfeit to ^x[the Government] ²[* * *] the sum of rupees.....

Dated this.....day of.....19

(Sd.) E. F.

(Where a bond with sureties is to be executed add)—We do hereby declare ourselves sureties for the above-named E.F., that he will, on the aforesaid A.B. being made over to his care, have the said A.B. properly taken care of and prevented from doing injury to himself or to others; and in case of the said ' E.F. making default therein, we bind, ourselves, jointly and severally, to forfeit to 1[the Government] 2[* * *] the sum of rupees.....

Dated this.....day of_____19

(Signature)

FORM 8
Bond on the discharge of a lunatic from an asylum on the undertaking of relative or friend to take due care
(See Sec. 33)

Whereas A. B., son of..... inhabitant of.....is a lunatic who is now detained in the asylum at.....under an order made by C. D., a Presidency Magistrate for the town

of..... [or Commissioner of Police for..... ..] [or the District/ Sub-Divisional Magistrate of....., or a Magistrate of the first class specially empowered under Act IV of 1912] under Sec. 14 lor Sec. 15] of Act IV of 1912, and whereas I, E. F., son of.....inhabitant of..... ..have applied to the said Magistrate [or Commissioner of Police] that the said A.B. may be delivered to my care and custody.

I hereby bind myself that on the said A. B. being made over to my care and custody, I will have him properly taken care of and prevented from doing injury to himself or to others ; and in case of my making default therein, I hereby bind myself to forfeit to ¹[the Government] ²[* * *] the sum of rupees.....

Dated this.....day of.....19

(Sd.) E.F.

(Where a bond with sureties is to be executed add) We do hereby declare ourselves sureties for the above-named E. F., that he will, on the aforesaid A. B., being delivered to his care and custody, have the said A. B. properly taken care of and prevented from doing injury to himself or to others; and in case of the said E. F. making default therein, we bind ourselves, jointly and severally, to forfeit to ¹[the Government] ²[* * *] the sum of rupees.

Dated this.....day of 19

(Signature)

SCHEDULE II.—Enactment repealed.— *Repealed by the Second Repealing and Amending Act, 1914 (17 of 1914), Sec. 3 and Sch. II.*

1. Subs, by the A. L. O., 1950, for the words "His Majesty the King".
2. The words "Emperor of India" omitted by the A.L.O., 1948.