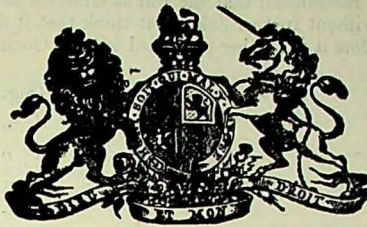


THE



Bombay Government Gazette.

Published by Authority.

THURSDAY, 19TH MARCH 1896.

Separate paging is given to this Part in order that it may be filed as a separate compilation

PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Report of the Select Committee on the Bill to amend the Indian Contract Act, 1872, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 12th March 1896 :—

We, the undersigned, members of the Select Committee to which the Bill to amend the Indian Contract Act, 1872, was referred, have considered the Bill, and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

2. We have suggested certain verbal amendments in the second of the new sections (69B) which it is proposed to insert in the Act, with the object of assimilating the wording with that of the first (69A) and making it clear that the scope of the provision is intended to be confined to cases of preservation from alienation. The paragraph in new section 69A, which defines the priority of the charge contemplated, has at the same time been reproduced as an addition to new section 69B.

3. Section 69C proposed by the Bill as introduced in Council has been omitted, it being in our opinion a provision possibly calculated to give rise to practical difficulties and to lead to transactions of a evinous character.

4. We have thought it desirable to safeguard the measure by limiting in the proposed new section 69D (now 69C) the period within which a declaratory suit of the kind there provided for may be instituted, and we have extended the right of suit against all parties, as well as the owner, interested in the immoveable property charged.

5. New section 69E (now 69D) has been amended so as to make it clear that the intention is to cover transfers, not only of immoveable property but also of any interest therein, made subsequently to the payment in respect of which the charge is claimed and without notice of such payment.

6. The publication ordered by the Council has been made as follows :—

In English.

<i>Gazette.</i>	<i>Date.</i>
Gazette of India... ..	22nd February 1896.
Fort Saint George Gazette	10th March 1896.
Bombay Government Gazette	27th February 1896.
Calcutta Gazette	26th February 1896.
North-Western Provinces and Oudh Government Gazette	29th February 1896.
Punjab Government Gazette	5th March 1896.
Central Provinces Gazette	27th February 1896.
Burma Gazette	7th March 1896.
Assam Gazette	7th March 1896.
Coorg District Gazette	Not reported.
Sind Official Gazette	Not reported.

7. We are not prepared to recommend that the Bill as amended be at once taken into consideration with a view to its being passed without further delay, but think that it should be circulated in its present form for opinion and criticism before it is further proceeded with in Council.

(Signed) ALEX. EDW. MILLER.
 (") J. WOODBURN.
 (") A. CADELL.
 (") MOHINY MOHUN ROY.
 (") P. ANANDA CHARLU.
 (") G. H. P. EVANS.
 (") G. P. GLENDINNING.

The 11th March 1896.

No. II.

A Bill to amend the Indian Contract Act, 1872.

WHEREAS it is expedient to amend the Indian Contract Act, 1872; It is hereby enacted as follows:—

IX of 1872. Addition of new sections after section 69, Act IX, 1872.

1. After section 69 of the said Act the following sections shall be added, namely:

“69A. If any such payment as is mentioned in the last foregoing section is made by a person possessing an interest in any immovable property and is, by reason of the default of the person bound by law to make it, necessary for the purpose of preserving such property from alienation and has the effect of so preserving it, the person making the payment shall be entitled to a charge upon the property so preserved for reimbursement of the sum so paid, with interest at such rate as the Court may direct.

“Such charge shall have priority over all charges on, and rights in, such property, which would have been defeated if such alienation had taken effect, and shall be subject to all such charges and rights as would have remained unaffected notwithstanding such alienation.

“69B. When two or more persons are jointly interested in any immovable property, and one of such persons, in order to preserve it from alienation and with the effect of so preserving it, makes any payment in respect thereof to which they are jointly and severally liable, or to which they are bound by law to contribute either equally or in any definite proportions, the person making such payment shall be entitled to a charge upon the interest or respective interests of the other or others of them for reimbursement to him of the proportion or respective proportions of the sum so paid to the payment of which he or they respectively was or were so liable as aforesaid, together with interest thereon at such rate as the Court may direct.

“Such charge shall have priority over all charges on, and rights in, such property, which would have been defeated if such alienation had taken effect,

and shall be subject to all such charges and rights as would have remained unaffected notwithstanding such alienation.

“69C. Any person claiming to be entitled to a charge on any property under either of the two last foregoing sections may, at any time within twelve months after the payment in respect of which the charge is claimed, but not afterwards, maintain a suit against the owner of the property and all other parties interested for a declaration of the existence and extent of such charge.

“69D. (1) Nothing in sections 69A, or section 69B shall affect the right of the Government to sell an estate free from all encumbrances and charges under the law for the time being in force for the recovery of arrears of land-revenue and other public demands.

(2) Notwithstanding anything contained in the sections aforesaid, no charge of the nature therein described shall enure as against a *bond fide* transferee for value of immovable property, or any interest therein transferred subsequently to the payment in respect of which the charge is claimed, unless prior to the transfer to such transferee there has been registered in British India, under the law for the time being in force for the registration of documents, either an agreement by the predecessors in title of such transferee acknowledging, or a certified copy of the decree of a Court of competent jurisdiction declaring, the existence and extent of such charge:

“Provided that, notwithstanding such registration, no such charge shall be valid as against any such *bond fide* transferee for value who shall prove to the satisfaction of the Court that at the time when he parted with his purchase-money he was in fact ignorant of the existence of the charge and could not by reasonable diligence have discovered its existence.

“Explanation.—In the construction of this section ‘purchase-money’ shall include any valuable consideration given for the transfer of the property in question.”

S. HARVEY JAMES,
 Secretary to the Government of India.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 12th March 1896:—

No. 12 of 1896.

A Bill to provide for the recognition in British India of Probates and Letters of Administration granted by Courts in the United Kingdom.

WHEREAS it is expedient to provide for the recognition in British India of probates and letters of administration granted by the Courts in the United Kingdom; It is hereby enacted as follows:—

1. (1) This Act may be called the United Kingdom Probates Act, 1896.

(2) It extends to the whole of British India (inclusive of Upper Burma, except the Shan States), and

(3) It shall come into force at once.

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

(a) the expression "Court of Probate" means any Court or authority, by whatever name designated, having jurisdiction in matters of probate, and in Scotland means the Sheriff Court of the County of Edinburgh;

(b) the expressions "probate" and "letters of administration" include confirmation in Scotland and any instrument having in the United Kingdom the same effect as under the law of British India is given to probate and letters of administration respectively;

(c) the expression "probate duty" includes any duty payable on the value of the estate and effects for which probate or letters of administration is or are granted;

(d) the expression "High Court" has the same meaning as it has in the Indian Succession Act, 1865.

3. (1) Where a Court of Probate in the United Kingdom has granted probate of the will or letters of administration of the estate of a deceased person, the probate or letter so granted may, on being produced, and a copy thereof deposited, in a High Court, be sealed with the seal of such High Court, and thereupon

shall be of the like force and effect and have the same operation in British India as if granted by such High Court:

(2) Provided that, before any such probate or letters of administration is or are sealed under the section, the High Court—

(a) shall be satisfied that the court-fees payable under article 11, Schedule I of the Court-fees Act, 1870, or otherwise, and all other probate duty (if any) payable in respect of so much (if any) of the estate as is liable to probate duty in British India in the case of probates and letters of administration granted by such High Court, have been duly paid, and

(b) may, in the case of probates, and shall in the case of letters of administration, require that an administration-bond, with one or more sureties and in such form as may from time to time be prescribed by it, be given for the due collection, getting in and administering so much of the estate as is in British India.

(3) The High Court may also, if it shall think fit, on the application of any creditor of the deceased, require, before such probate or letters of administration is or are sealed as aforesaid, that adequate security be given for the payment of debts due from the estate to creditors residing in British India.

(4) For the purposes of this section a duplicate of any probate or letters of administration sealed with the seal of the Court granting the same, or a copy thereof certified as true by, or under the authority of, the Court granting the same, shall have the same effect as the original.

(5) The power to make rules as to procedure given to a High Court by any enactment for the time being in force shall extend to the making of rules for regulating the procedure and practice, including fees and costs on, or incidental to, an application for the sealing under this section of a probate or letters of administration granted in the United Kingdom. Such rules may also provide for the hearing of all or any of such applications by the Registrars of such Courts.

(6) The provisions of the Court-fees Act, 1870, and of every other enactment for the time being in force relating to probate duty (including the penal provisions thereof) shall apply as if the person applying for sealing under this section were a person applying for probate or letters of administration under the law for the time being in force in British India.

4. Every person applying to a High Court for probate or letters of administration sealed under the last preceding section shall, on making such application, file in the Court an address at a place not more than five miles from the Court house where notices and other documents relating to the estate of the deceased person may

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be left, and every such notice or other document left at such address shall be deemed to have been duly served upon the executor or administrator, as the case may be, by or on behalf of whom such application is made.

5. This Act shall apply to probates and letters of administration granted in the United Kingdom either before or after the passing thereof.

Application of Act to probates, etc., already granted.

STATEMENT OF OBJECTS AND REASONS.

THE Statute 55 Vict., c. 6, provides for the recognition in the United Kingdom of probates and letters of administration granted in any British possession in which the Legislature has made adequate provision for the recognition of probates and letters of administration granted by the Courts of England and Ireland and of confirmation granted by the Courts of Scotland. The object of this Bill is to make such provision in British India and so to pave the way for the reciprocity contemplated by the English Statute.

The 9th March 1896.

(Signed) ALEX. EDW. MILLER.

S. HARVEY JAMES,
Secretary to the Government of India.