

THE



# Bombay Government Gazette.

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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 Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 8th December 1874, and was referred to a Select Committee with instructions to make their report thereon in two months:—

#### Bill No. 16 of 1874.

*A Bill to amend the law relating to Probates and Letters of Administration.*

WHEREAS, under the Indian Succession Act, 1865, the effect of an unlimited grant of probate or letters of administration made by any Court in British India is confined to the Province in which such grant is made: And whereas it is expedient to extend over British India the effect of such grants when made by a High Court; It is hereby enacted as follows:—

1. All probates and letters of administration granted by a High Court after the passing of this Act shall, unless otherwise directed by the grant, have effect over all the moveable and immoveable property of the deceased

Unlimited grants of probate or letters of administration made by a High Court to take effect throughout British India.

throughout the whole of British India, and shall be conclusive as to the representative title against all debtors of the deceased and all persons holding property which belonged to him; and shall

afford full indemnity to all debtors paying their debts and to all persons delivering up such property to the executor or the administrator, as the case may be.

2. Except in cases where it is sought to obtain a grant of probate or letters of administration limited to the Province in which the High Court making the grant is situate, the executor or the person applying for administration to the effects of any person hereafter dying in British India and leaving property in more than one Province shall include in the inventory of the effects of the deceased his moveable or immoveable property situate in each of the said Provinces.

And the value of such property situate in the said Provinces, respectively, shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value property affected thereby wheresoever situate within British India.

3. And whereas it is expedient to grant relief where too high a court-fee has been paid on any probate of a will or letters of administration, it is hereby further enacted as follows:—

Where any person on applying for the probate of a will or letters of administration has estimated the property of the deceased to be of greater value

than the same has afterwards proved to be, and has consequently paid too high a court-fee thereon, if such person produces the probate or letters to the Chief Controlling Revenue Authority within six months after the true value of the property has been ascertained,

and delivers to such Authority a particular inventory and valuation of the property of the deceased, verified by affidavit or affirmation,

and if such Authority is satisfied that a greater fee was paid on the probate or letters than the law required,

the said Authority may—

- (a) cancel the stamp on the probate or letters;
- (b) substitute another stamp for denoting the duty which should have been paid thereon; and
- (c) make an allowance for the difference between them as in the case of spoiled stamps, or, if the difference be considerable, repay the same in money, at his discretion.

4. And whereas it is also expedient to grant relief in case of several probate or letters of administration has been made more than once in respect of the whole or any part of the same estate, it is hereby further enacted as follows:—

(a) Whenever a grant of probate or letters of administration has been or is made in respect of the whole of the property belonging to an estate, no fees shall be chargeable under the Court Fees Act, 1870, when a like grant is made in respect of the whole or any part of the same property belonging to the same estate;

(b) whenever a grant of probate or letters of administration has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under the same Act shall be deducted when a like grant is made in respect of property belonging to the same estate, identical with or including the property to which the former grant relates.

#### STATEMENT OF OBJECTS AND REASONS.

1. A grant of probate or letters of administration under the Indian Succession Act, 1865, takes effect only in the Province in which the grant is made, and 'Province' is defined as a 'division of British India having a Court of last resort.' Probate or administration granted (say) in Lower

Bengal is therefore inoperative in Madras, Bombay, and elsewhere in India; and the executor of a shareholder in the Bank of Bengal who dies in Calcutta (where his will is proved), would be liable to the extra expense of appointing three attorneys, and obtaining administration in Madras, Bombay, and the North-Western Provinces, if (as might well happen) the deceased was interested in the Banks of Madras and Bombay, and held shares in a tea-plantation in Kumáon.

2. A system involving expensive and tedious formalities may be expected to produce hardship, and cases which have recently come before the Government of India prove that such is actually the case.

3. The remedy is to provide that the person who is duly constituted executor or administrator by a competent Court shall be the owner of his testator's or intestate's property as completely throughout British India as he now is throughout the Province in which probate is granted. And there is no reason why in a country under one Supreme Legislature and one financial system, a representative of a deceased person once duly constituted anywhere, should not be recognized everywhere.

4. It is thought that, in the first instance at all events, the 'competent' Court should be a High Court as defined by Act I. of 1868.

5. The opportunity has been taken to insert a provision (resembling that made by 55 Geo. III., c. 184, s. 40) for granting relief when too high a court-fee has been paid on any probate or letters of administration. The matter has been provided for executively (by Financial Notification, No. 2025, dated 15th August 1872), but it is more satisfactory to the public that such a provision should be made by the Legislature.

6. The Bill also proposes to give relief from double payment of court-fees where a grant of probate or letters of administration is made more than once in respect of the whole or any part of the same estate. This matter, also, has been provided for by the Executive; but the provision should now be placed on the Indian Statute-book.

(Signed) A. HOBHOUSE.

Simla, October 16th, 1874.

WHITLEY STOKES,

Secretary to the Government of India.

[Published with the "Bombay Government Gazette" on the 24th December 1874.]

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WHEREAS, under the Indian Succession Act, 1865, the effect of an unlimited grant of probate or letters of administration made by any Court in British India is confined to the Province in which such grant is made: And whereas it is expedient to extend over British India the effect of such grants when made by a High Court; It is hereby enacted as follows:—

1. All probates and letters of administration granted by a High Court after the passing of this Act shall, unless otherwise directed by the grant, have effect over all the moveable and immoveable property of the deceased throughout the whole of British India, and shall be conclusive as to the representative title against all debtors of the deceased and all persons holding property which belonged to him; and shall afford full indemnity to all debtors paying their debts and to all persons delivering up such property to the executor or the administrator, as the case may be.

2. Except in cases where it is sought to obtain a grant of probate or letters of administration limited to the Province in which the High Court making the grant is situate, the executor or the person applying for administration to the effects of any person hereafter dying in British India and leaving property in more than one Province shall include in the inventory of the effects of the deceased his moveable or immoveable property situate in each of the said Provinces.

And the value of such property situate in the said Provinces, respectively, shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with

a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within British India.

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Where any person on applying for the probate of a will or letters of administration has estimated the property of the deceased to be of greater value than the same has afterwards proved to be, and has consequently paid too high a court-fee thereon, if such person produces the probate or letters to the Chief Controlling Revenue Authority within six months after the true value of the property has been ascertained,

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- (c) make an allowance for the difference between them as in the case of spoiled stamps, or, if the difference be considerable, repay the same in money, at his discretion.

4. And whereas it is also expedient to grant relief in case of several grants. where a grant of probate or letters of administration has been made more than once in respect of the whole or any part of the same estate, it is hereby further enacted as follows:—

(a) Whenever a grant of probate or letters of administration has been or is made in respect of the whole of the property belonging to an estate, no fees shall be chargeable under the Court Fees Act, 1870, when a like grant is made in respect of the whole or any part of the same property belonging to the same estate;

(b) whenever a grant of probate or letters of administration has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under the same Act shall be deducted when a like grant is made in respect of property belonging to the same estate, identical with or including the property to which the former grant relates.

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a representative of a deceased person once duly constituted anywhere, should not be recognized everywhere.

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