

## ACT No. XVII. OF 1852.

---

*Passed by the Governor General of India in Council on  
the 12th March 1852.*

*An Act to diminish the expense and delay of proceedings in Her  
Majesty's Courts within the Territories of the East India  
Company.*

I. **IT** shall be lawful for persons interested or claiming to be interested in any question cognizable in Her Majesty's Courts within the Territories of the East India Company, on the Equity, Plea, Ecclesiastical or Admiralty sides thereof respectively, and including among such persons all lunatics, married women, and infants in the manner and under the restrictions hereinafter contained, to concur in stating such question in the form of a special case for the opinion of the said Courts, and it shall also be lawful for all Executors, Administrators, Representatives, and Trustees to concur in such case

Persons interested in questions cognizable in Her Majesty's Courts may state special cases for the opinion of such Courts.

II. The Committee of the estate of any lunatic interested or claiming to be interested in any such question as aforesaid may, after having been authorized in that behalf by the Court or any Judge thereof in which such special case is filed, concur in such case in his own name, and in the name and on the behalf of the lunatic.

How lunatic may concur.

*a*

III. A

ACT No. XVII. OF 1852.

III. A husband interested or claiming to be interested in right of his wife in any such question as aforesaid may concur in such case in his own name and in the name of his wife where the wife has no claim to any interest distinct from her husband, and a married woman having or claiming any interest in any such question as aforesaid distinct from her husband may in her own right concur in such case, provided that her husband also concurs therein ; but nothing herein contained shall be construed so as to require the husband of a Mahomedan or Hindoo female to concur in such case.

IV. The guardian of any infant interested or claiming to be interested in any such question as aforesaid may concur in such case in the name and on the behalf of the infant, unless such guardian has an interest in such question adverse to the interest of the infant therein.

V. It shall be lawful for the said Courts, by order to be made in the matter of any lunatic not found such by inquisition, or in the matter of any infant, upon the application of any person on the behalf of such lunatic, or upon the application of such infant, by motion or petition, to appoint any person shown by affidavit to be a fit person, and to have no interest adverse to the interest of the lunatic or infant, to be the special guardian of such lunatic or infant for the purpose of concurring in such case in the name and on behalf of the lunatic or infant, and any such person so appointed may lawfully so concur. Provided always, that it shall be lawful for the said Courts to require notice of such application to be given to such person, if any, as the Court shall think fit.

VI. In any case in which any such order as aforesaid shall have been made by the said Courts, in the matter of any infant without notice to the guardian of the infant, it shall be lawful for the said Courts, if they shall respectively think

ACT No. XVII. OF 1852.

think fit so to do, to discharge such order upon the application of such guardian, by motion or petition; and the said Courts, if they shall respectively think fit, may thereupon appoint some other fit person to be the special guardian of such infant for the purpose of such special case, and may also give such directions as may be necessary for substituting in such special case either the name of the guardian so applying, or of the special guardian so appointed, in lieu of the name of the special guardian so displaced. Provided always, that the discharge of any Order appointing a special guardian shall not invalidate any thing which shall in the meantime have been done by such special guardian, unless the Court shall, upon notice to all parties, specially so direct.

**VII.** Every such special case shall be entitled as a cause between How special cases to be entitled. some or one of the parties interested or claiming to be interested as plaintiffs or plaintiff, and the others or other of them as defendants or defendant; and in the title to such cases, lunatics and infants shall be described as such, and their Committees, guardians, or special guardians named; and where in any such case a married woman is named as a plaintiff, and her husband as a defendant thereto, a next friend of such married woman shall be named in the title to such case; but nothing herein contained shall be construed so as to require a next friend of any Hindoo or Mahomedan married woman to be named in such title.

**VIII.** Every such special case shall concisely state such facts and Form of special case. documents as may be necessary to enable the Court to decide the question raised thereby; and upon the hearing of such case, the Court and the parties shall be at liberty to refer to the whole contents of such documents; and the Court shall be at liberty to draw from the facts and documents stated in any such special case any inference which the Court might have drawn therefrom if proved in a cause.

**IX.** Every

ACT No. XVII. OF 1852.

**IX.** Every such special case to which an infant or lunatic is a party by his guardian or special guardian, shall also state how such guardian or special guardian was constituted; and where any married woman having or claiming any interest distinct from her husband is a party to such case, it shall be stated therein that she concurs in such case in her own right.

Special case to state how guardian constituted, and the concurrence of married women.

**X.** Every such special case shall be signed by Counsel for all parties, and shall be filed in the same manner as bills, complaints, or allegations are filed, and the defendants may appear thereto in the same manner as defendants appear to bills, complaints, or allegations, and no defendants shall be required to take an office copy of a special case, but an office copy thereof shall be taken by the plaintiff.

Special case to be signed by Counsel and filed, and appearances to be entered for defendants.

**XI.** After a special case shall have been filed, and the defendants shall have appeared thereto, all the parties to such special case shall be subject to the jurisdiction of the Court in the same manner as if the plaintiff in the special case had filed a bill, complaint, or allegation against the parties named as defendants thereto, and such defendants had appeared to such bill, complaint, or allegation, and upon the special case being filed and appearances entered thereto as aforesaid, all parties to such special case, shall, for the purposes of such special case, be bound by the statements therein.

Parties to be bound by statements after defendants have appeared to special case.

**XII.** So soon as all the defendants shall have appeared to the special case, the same may be set down for hearing, and subpoenas to hear judgment or notices of hearing, issued and served according to the practice of the said Courts.

How cases to be set down for hearing.

**XIII.** It

ACT No. XVII. OF 1852.

**XIII.** It shall be lawful for the said Court upon the hearing of any such special case as aforesaid, to determine the questions raised therein or any of them, and, by decree or judgment, to declare its opinion thereon, and so far as the case shall admit of the same, upon the right involved therein, without proceeding to administer any relief consequent upon such declaration, and every such declaration of the said Court contained in any such decree or judgment shall have the same force and effect as such declaration would have had, and shall be binding to the same extent as such declaration would have been if contained in a decree or judgment made in a suit between the same parties instituted by bill, plaint, or allegation; provided always, that if upon the hearing of such special case as aforesaid, the Court shall be of opinion that the statements contained therein so far as the same affect the interest of any married woman, infant, or lunatic are not true, or that the questions raised thereby or any of them cannot properly be decided upon such case, the same may be at such hearing, with the consent of all parties thereto, and of the Court, amended, so as properly to raise such questions, or the said Court may refuse to decide the same.

Upon hearing Court to determine question and make declaration.

Proviso that Court may refuse to decide.

**XIV.** Every executor, administrator, representative, trustee, or other person making any payment or doing any act in conformity with the declaration contained in any decree or judgment made or pronounced upon a special case, shall in all respects be as fully and effectually protected and indemnified by such declaration, as if such payment had been made or act done under or in pursuance of the express order of the said Court made in a suit, action, or proceeding between the same parties instituted by bill, plaint, or allegation, save only as to any rights or claims of any person in respect of matters not determined by such declaration.

Protection to be afforded to Trustees by declaration.

*b*

**XV.** Where

ACT No. XVII. OF 1852.

XV. Where any person shall be desirous to have a special case re-heard, or to appeal from the decision thereon, it shall be lawful for the said Courts respectively, upon application for that purpose, either at the time of the decree or judgment upon such special case being made, or at any time afterwards, and upon such conditions, if any, as the Court shall think fit, to order that the declaration contained in such decree shall not be acted upon for such time as the said Courts respectively shall think just.

The Court may suspend the acting upon declaration.

XVI. The filing of a special case, and the entering of appearances thereto by the persons named as defendants therein, shall be taken to be a *lis pendens*.

Special case to be a *lis pendens*, and may be filed.

XVII. Any documents referred to in a special case, and any copies thereof or extracts therefrom, identified by the signature of the solicitors for all parties, may be produced and read at the hearing of such case, without further proof; and it shall be lawful for the said Courts respectively, at any time after the filing of the special case, and the entering of appearances thereto by the persons named as defendants therein, to order any document, which may be admitted thereby to be in the possession of any party to such case, to be deposited and produced in such manner and for such purposes as the said Courts respectively shall think fit.

Mode of identifying documents, and Court may order production.

XVIII. It shall be lawful for the said Courts upon the application of the executors, administrators or representatives in estate of any deceased person, by order to be made upon motion or petition of course, and to be in the form or to the effect set forth in the Schedule hereto, with such variations as circumstances may require, to refer it to the Master of the said Courts respectively to take an account of the debts and liabilities affecting

Court, on application of Executors or Administrators, may by order of course direct it to be referred to a Master to take an account of debts and liabilities.

ACT No. XVII. OF 1852.

affecting the estate of such deceased person, and to report thereon; provided always, that no such order shall be made until the expiration of one year next after the death of such deceased person, or pending any proceedings to administer the estate of such person, and in case at any time after the making of such order, any decree or order for administering the estate of such deceased person shall be made, it shall be lawful for the said Courts respectively, by such decree or order, to stay or suspend the proceedings under such order of course on such terms and conditions, if any, as to the said Courts respectively shall seem just.

XIX. It shall be lawful for any person who may have come in before the Master under any such order, and claimed to be a creditor upon the estate of the deceased person, or to have any demand upon such estate by reason of any liability, and whose debt or claim may not have been wholly allowed by the said Master, to apply to the Court making such order by motion, of which notice shall be given within fourteen days after the filing of the Master's report, to have such claim allowed by such Court, either wholly or partially; and it shall be lawful for the said executors, administrators or representatives in estate, and for any creditor of the deceased person who may be authorized by special leave of the said Court so to do, to apply to the said Court by motion, of which notice shall be given within the time aforesaid, to have any debt or claim allowed by the said Master disallowed by the said Court, either wholly or partially, and, at the expiration of fourteen days after the filing of the said report, the same shall, except as to any debt or claim as to which any such notice as aforesaid may have been given, be absolute, as if the same had been confirmed by order of the said Court.

XX. Upon the hearing of any such motion as aforesaid, the said Courts respectively may either dismiss such motion, or may order the debt or claim to which such motion relates

Master's Report may be objected to by motion to the Court, of which notice shall be given.

Proceeding of the Court on such motion.

ACT No. XVII. OF 1852.

relates to be allowed or disallowed, as the case may be, and either wholly or partially, or may direct further inquiry or further proceedings, by way of action or otherwise, touching such debt or claim, and after such inquiry or proceedings may, upon further motion, deal with such debt or claim as to the said Courts respectively shall seem just: provided always, that no new evidence shall be received by the said Courts upon the hearing of any such motion without special leave of the said Courts.

**XXI.** In case any debt or any certain liability shall have been allowed as aforesaid, and shall not within fourteen days after the report has become absolute as to such debt or liability, or after the same shall have been allowed by the said Court, be paid or provided for by appropriation to the satisfaction of the person who has established such liability, it shall be lawful for the said Courts respectively by order to be made in case of any debt remaining due, upon the application by motion or petition of the person to whom the debt remains due, and on notice to the executors, administrators, or representatives in estate, and in case of any certain liability remaining unprovided for by appropriation upon the application by motion or petition of the person by whom such liability has been established, or of the executors, administrators, or representatives in estate, and on notice by the party applying to the other of them, to order payment of the debts which may have been allowed and remain unpaid, and to provide for the certain liabilities which may have been allowed and remain unprovided for, in like manner as the same could or might have been paid or provided for in a suit for that purpose instituted by bill, or to refer it to the Master to take an account of the debts and certain liabilities allowed as aforesaid which remain unpaid or unprovided for, and also the usual accounts of the estate of the deceased person, with all usual and proper directions; and every such order shall have the same force and effect and shall be prosecuted and carried on in like manner as a decree in a creditor's suit instituted by bill.

**XXII.** Nothing



ACT No. XVII. OF 1852.

XXII. Nothing in Sections XVIII. and XXI. of this Act contained shall be construed so as to prevent any of Her Majesty's Courts from taking such accounts as aforesaid in any manner in which, according to the usual practice of such Courts, the same might have been taken if directed by decretal order made in a suit.

Accounts to be taken according to usual practice of the Courts.

XXIII. In case any contingent liability shall be allowed by the said report or by the said Courts respectively, it shall be lawful for the said Courts, by order, to be made upon the application of the executors, administrators, or representatives in estate, by motion or petition, on notice to the person who may have established such contingent liability, to order such sum of money, part, or proceeds of part, of the estate of the deceased person, as to the said Courts respectively shall seem just, to be set apart and appropriated for answering such contingent liability, and to give such directions as the said Courts shall think fit touching the payment of such sum of money into Courts, and the investment thereof, and the payment, application, or accumulation of the interest or dividends thereof in the mean time and until the same shall be required to answer such liability, and when such liability shall be ascertained or determined, to give such directions as to the payment of such sum out of Court as the said Courts respectively shall deem right: Provided always, that no order to be made as aforesaid shall in any manner bind the assets so appropriated as against the persons entitled to the estate of the deceased subject to the contingent liability; and any person interested in such appropriated assets may apply to the Court touching the same, as he may be advised.

Court, on application of executors or administrators, &c., may direct appropriation of money to answer contingent liability.

XXIV. After the filing of such report as aforesaid, it shall be lawful for the said Courts respectively upon the application of the executors, administrators, or representatives in estate of the deceased, by order, to be made on motion, to restrain by injunction

Court may restrain proceedings against executors, administrators, &c.

c

ACT No. XVII. OF 1852.

junction any proceedings at law against them by any person having or claiming to have any demand upon the estate of the deceased by reason of any debt or liability other than the persons who may have established contingent liabilities under the said order for which no appropriation may have been made.

**XXV.** In case no debt or liability, or no debt or liability other than a contingent liability, shall have been allowed as aforesaid, or in case any debt or liability other than as aforesaid shall have been allowed as aforesaid, then after the same shall have been paid or provided for by appropriation as aforesaid, all payments made by the executors, administrators, or representatives in estate, or any of them, on account of the estate of the deceased person, and all dispositions of such assets made by them or any of them on account of such estate, shall, as against all persons having or claiming to have any demand upon such estate by reason of any debt or liability, other than persons who may have established under the said order any contingent liability for which no such appropriation as aforesaid may have been made, be as good and effectual as if the same had been made under a decree of the said Courts respectively: Provided always, that nothing herein contained shall in any manner affect or prejudice the rights of any creditor or other person having any demand or claim upon the estate of the deceased against any assets so paid or disposed of, or against the persons to whom such payment or disposition may have been made, or against any assets appropriated under the provisions of this Act, and the appropriation of which, if made under a decree of the said Court, in a suit to which he was not a party, would not have been binding upon him.

**XXVI.** All exceptions for scandal, impertinence, and insufficiency, which according to the existing practice of the said Courts are referred to the Masters of the said Courts, shall not any longer be so referred, but shall be heard and determined in the first instance by the said Courts, or any Judge thereof.

Exceptions for scandal, impertinence and insufficiency to be heard by the Court.

**XXVII.** Notwithstanding

ACT No. XVII. OF 1852.

**XXVII.** Notwithstanding any rule or practice of the said Courts to the contrary, it shall be lawful for the said Courts respectively, at the hearing of any cause or of any further directions therein, to receive proof by affidavit or otherwise of all proper parties being before the Court, and of all such matters as are necessary to be proved for enabling the said Courts respectively to order payment of any moneys belonging to any married woman, and of all such other matters, not directly in issue in the cause, as in the opinion of the said Courts respectively may safely and properly be so proved.

Power for Court, notwithstanding any rule, &c., to the contrary, to receive proof by affidavit.

**XXVIII.** It shall be lawful for the said Courts respectively, from time to time, to make, rescind, and alter General Rules and Orders for better enabling the opinion of the said Courts respectively to be obtained on special cases, and for effectuating the purposes of this Act as to the debts and liabilities of deceased persons, and for making any provisions which may be or be deemed necessary or proper as to amendment, revivor and supplemental matter or relief, and as to costs of any proceedings under or in pursuance of this Act, and for regulating the times and form and mode of procedure and practice of the said Courts in respect of the matters to which this Act relates, and every of them, and so far as may be found expedient for altering the course of proceeding hereinbefore prescribed in respect to such matters or any of them, and generally for assimilating the practice of the said Courts respectively to that of the High Court of Chancery in England.

Her Majesty's Courts to make General Rules and Orders from time to time.

**XXIX.** All such General Rules and Orders shall be laid before the Governor General of India in Council within one month after the making and issuing of the same, and every such Rule or Order shall, from and after the time in that behalf to be appointed by the said Courts respectively, and

if

ACT No. XVII. OF 1852.

if no time shall be so appointed, then from and after the making thereof, be binding and obligatory on the said Courts respectively, and be of like force and effect as if the provisions therein contained had been expressly enacted by the Governor General of India in Council. Provided always, that if the said Governor General of India in Council shall, by any resolution passed at any time within six months after such Rules, Orders, and Regulations shall have been laid before him, resolve that the whole or any part of such Rules or Orders ought not to continue in force, in such case the whole or such part thereof as shall be so included in such resolution shall, from and after the time that such resolution is notified to the said Court, cease to be binding and obligatory on the said Court; provided that every such Rule or Order so made or expressed to be made in pursuance of this Act which shall not be laid before the Governor General of India in Council within the time by this Act limited for that purpose shall, from and after the expiration of such time, be absolutely void and of no effect. Provided always, that nothing in this clause contained shall be construed so that the said Rules or Orders should not be transmitted as heretofore to Her Majesty in Privy Council for approbation.

**XXX.** In the mean time and until any such General Rules or Orders shall be made, and in so far as the same, when made, shall not be applicable, the proceedings under this Act shall be governed and regulated by the provisions herein contained, so far as the same extend, and in so far as the same do not extend shall, as well with respect to the persons who ought to be made parties to special cases as in every other respect, be governed and regulated by the Rules, Orders and Practice of the said Courts respectively, in suits instituted by bill, so far as the same can be applied thereto; and subject to such General Rules and Orders as aforesaid, the costs of all proceedings under this Act, shall be in the discretion of the said Courts respectively.

Until Rules or Orders are made, and if not applicable when made, practice to be according to this Act and practice of the Courts.

**XXXI.** All

ACT No. XVII. OF 1852.

XXXI. All decrees and orders made under the provisions of this Act, shall be subject to rehearing, appeal, and review, and may be discharged and varied in the same and the like manner as decrees and orders of the said Courts made in suits instituted by bill.

XXXII. The following words and expressions in this Act shall have the several meanings hereby assigned to them, unless there be something either in the subject or in the context repugnant to such construction :

Words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular number :

Words importing the masculine gender only shall include females :

The expression " Her Majesty's Courts" or " Courts" shall mean and include Her Majesty's Supreme Courts of Judicature at Bengal, Madras and Bombay, and also the Court of Judicature of Prince of Wales' Island, Singapore and Malacca :

The word " Lunatic" shall include idiots and persons of unsound mind, and whether found such by inquisition or not :

The word " Guardian" shall mean father or testamentary guardian, or guardian appointed by any of Her Majesty's Courts, (not being a special guardian appointed under the Provisions of this Act.)

XXXIII. This Act shall commence and take effect from and after the tenth day of April, One thousand eight hundred and fifty-two.

Commencement of Act.

*d*

SCHEDULE

ACT No. XVII. OF 1852.

SCHEDULE REFERRED TO BY THE FOREGOING ACT,

(Date.)

In the matter of A. B. late of \_\_\_\_\_ in \_\_\_\_\_ Banker  
(or as the case may be), deceased.

Upon motion this day made into this Court by Mr. \_\_\_\_\_ of \_\_\_\_\_ Counsel  
for C. D. of \_\_\_\_\_ the executor (or administrator) of the abovenamed A. B. (or  
upon the humble petition of C. D. of \_\_\_\_\_ the executor (or administrator) of the  
said A. B. this day preferred unto the Supreme Court of Judicature at  
(for the reasons therein contained,) it is ordered ; that it be referred to the Master of this  
Court to take an account of the debts and liabilities affecting the (*personal or the real estate  
of the said A. B. or his moveable and immoveable estate as the case may be*), and to compute  
interest on such of the said debts and liabilities as carry interest, after the rate of interest  
the same respectively carry ; and the said Master is to cause an advertisement to be  
published in the \_\_\_\_\_ Gazette and such other public papers as he shall think fit for  
the persons claiming in respect of any such debts or liabilities, to come in before the said  
Master and prove their debts and claims, and he is to fix a peremptory day for that  
purpose ; and such of the creditors as shall not come in and prove their debts and  
claims by the time so to be limited, are to be excluded the benefit of this order ; and it  
is ordered, that the Master do distinguish debts from liabilities, and liabilities certain  
from liabilities contingent ; and it is ordered, that the said estate of the said A. B. be  
applied in payment and satisfaction of such debts and liabilities of the said A. B. in a  
due course of administration ; and for the better taking the said accounts and discovery  
of the matters aforesaid the parties are to produce before the Master, upon oath, all  
deeds, books, papers, and writings in their custody or power relating thereto, and are  
to be examined upon interrogatories or *videlicet* as the said Master shall direct ; and any  
of the parties are to be at liberty to apply to the Court as there shall be occasion.