

ACT No. XIII OF 1875.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 15th March 1875).

An Act 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: And whereas it is also expedient to amend the Court Fees Act, 1870, as to probates, letters of administration and certificates of administration: It is hereby enacted as follows:—

Preamble.

1. To section 3 of the Indian Succession Act, 1865, the following words shall be added (namely):—
“and for the purposes of sections 242, 242A, 246A and 277A, shall include the Court of the Recorder of Rangoon.”

Addition to Act No. X of 1865, section 3.

2. To section 242 of the Indian Succession Act, 1865, the following proviso shall be added (namely):—

Addition to Act No. X of 1865, section 242.

“Provided that probates and letters of administration granted by a High Court after the first day of April, 1875, shall, unless otherwise directed by the grant, have like effect throughout the whole of British India.”

Effect of unlimited probates, &c., granted by High Court.

3. The following section shall be inserted after the said proviso (namely):—

Addition to Act No. X of 1865.

“**242A.** Whenever a grant of probate or letters of administration is made by a High Court with such effect as last aforesaid, the Registrar or such other

Transmission of certificate by High.

officer

[Price two annas and three pies.]

Court granting probate, &c., to other Courts.

officer as the High Court making the grant appoints in this behalf shall send to each of the other High Courts a certificate to the following effect :—

I, *A. B.*, Registrar [*or as the case may be*] of the High Court of Judicature at [*or as the case may be*], hereby certify that on the day of 187 the High Court of Judicature at [*or as the case may be*] granted probate of the will [*or letters of administration of the estate*] of *C. D.*, late of deceased, to *E. F.* of and *G. H.* of , and that such probate [*or letters*] has [*or have*] effect over all the property of the deceased throughout the whole of British India ;

and such certificate shall be filed by the High Court receiving the same.”

Addition after section 246 of Act X of 1865.

4. After section 246 of the Indian Succession Act, 1865, the following section shall be inserted (namely) :—

Additional statements in petition for probate, &c.

“246A. Every person applying to a High Court for probate of a will or letters of administration of an estate, intended to have effect throughout British India, shall state in his petition, in addition to the matters respectively required by section 244 and section 246 of this Act, that to the best of his belief no application has been made to any other High Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid,

or, where any such application has been made, the High Court to which it was made, the person or persons by whom it was made, and the proceedings (if any) had thereon.

And the High Court to which any application is made under the proviso to section 242 of this Act may, if it think fit, reject the same.”

Addition after section 277 of Act X of 1865.

5. After section 277 of the Indian Succession Act, 1865, the following section shall be inserted (namely) :—

Inventory may include property in

“277A. In all cases where it is sought to obtain a grant of probate or letters of administration intended to

to have effect throughout the whole of British India, the executor, or the person applying for administration after the first day of April, 1875, to the effects, of any person 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 Provinces :

any part of
British India.

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."

6. After section nineteen of the Court Fees Act, 1870, the following chapter shall be inserted (namely) :—

Addition to
Act No. VII
of 1870.

“CHAPTER III A.

“PROBATES, LETTERS OF ADMINISTRATION AND CERTIFICATES OF ADMINISTRATION.

“19A. 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 within six months after the true value of the property has been ascertained, such person produces the probate or letters to the Chief Controlling Revenue Authority of the Province in which the probate or letters has or have been granted,

Relief where
too high a
Court-fee has
been paid.

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

the said Authority may—

(a) cancel the stamp on the probate or letters, if such stamp has not been already cancelled;

(b) substitute another stamp for denoting the Court-fee which should have been paid thereon; and

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

Relief where debts due from a deceased person have been paid out of his estate.

“19B. Whenever it is proved to the satisfaction of such Authority that an executor or administrator has paid debts due from the deceased to such an amount as, being deducted out of the amount or value of the estate, reduces the same to a sum which, if it had been the whole gross amount or value of the estate, would have occasioned a less Court-fee to be paid on the probate or letters of administration granted in respect of such estate than has been actually paid thereon under this Act,

such Authority may return the difference, provided the same be claimed within three years after the date of such probate or letters.

But when, by reason of any legal proceeding, the debts due from the deceased have not been ascertained and paid, or his effects have not been recovered and made available, and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said term of three years, the said Authority may allow such further time for making the claim as may appear to be reasonable under the circumstances.

Relief in case of several grants.

“19C. Whenever such 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, and the full fee chargeable under this Act has been or is paid thereon, no fee shall be chargeable under the same Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate;

Whenever such a grant has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under this Act shall

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.

“19 D. The probate of the will, or the letters of administration of the effects, of any person deceased heretofore or hereafter granted shall be deemed valid and available by his executors or administrators for recovering, transferring or assigning any moveable or immoveable property whereof or whereto the deceased was possessed or entitled, either wholly or partially as a trustee, notwithstanding the amount or value of such property is not included in the amount or value of the estate in respect of which a Court-fee was paid on such probate or letters of administration.

Probates declared valid as to trust-property though not covered by Court-fee.

“19 E. Where any person on applying for probate or letters of administration has estimated the estate of the deceased to be of less value than the same has afterwards proved to be, and has in consequence paid too low a Court-fee thereon, the Chief Controlling Revenue Authority of the Province in which the probate or letters has or have been granted, may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate or letters of administration to be duly stamped on payment of the full Court-fee which ought to have been originally paid thereon in respect of such value and of the further penalty, if the probate or letters is or are produced within one year from the date of the grant, of five times, or if it or they is or are produced after one year from such date, of twenty times, such proper Court-fee, without any deduction of the Court-fee originally paid on such probate or letters :

Provision for case where too low a Court-fee has been paid on probates, &c.

Provided that, if the application be made within six months after the ascertainment of the true value of the estate and the discovery that too low a Court-fee was at first paid on the probate or letters, and if the said Authority is satisfied that such fee was paid in consequence of a mistake or of its not being known at the time that some particular part of the estate belonged to the deceased, and without any intention

of

of fraud or to delay the payment of the proper Court-fee, the said Authority may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been at first paid thereon.

Administra-
tor to give
proper secu-
rity before
letters stamp-
ed under sec-
tion 19 E.

“19 F. In case of letters of administration on which too low a Court-fee has been paid at first, the said Authority shall not cause the same to be duly stamped in manner aforesaid until the Administrator has given such security to the Court by which the letters of administration have been granted as ought by law to have been given on the granting thereof in case the full value of the estate of the deceased had been then ascertained.

Executors,
&c., not pay-
ing full
Court-fee on
probates, &c.,
within six
months after
discovery of
underpay-
ment.

“19 G. Where too low a Court-fee has been paid on any probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under such probate or letters does not, within six months after the first day of April, 1875, or after the discovery of the mistake or of any effects not known at the time to have belonged to the deceased, apply to the said Authority and pay what is wanting to make up the Court-fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees and also a further sum at the rate of ten rupees per cent. on the amount of the sum wanting to make up the proper Court-fee.

Sections 19A
to 19G ap-
plied to certi-
ficates under
Acts XL of
1858 and
XX of 1864.

“19 H. The provisions of sections 19A to 19G (both inclusive) shall, *mutatis mutandis*, apply to certificates granted under Act No. XL of 1858 (*for making better provision for the care of the persons and property of Minors in the Presidency of Fort William in Bengal*) or Act No. XX of 1864 (*for making better provision for the care of the persons and property of Minors in the Presidency of Bombay*) and to the holders of such certificates.”