

THE SUCCESSION CERTIFICATE ACT, 1889.

CONTENTS.

SECTIONS.

1. Title, commencement, extent and application.
2. Repeal.
3. Definitions.
4. Proof of representative title a condition precedent to recovery through the Courts of debts from debtors of deceased persons.
5. Court having jurisdiction to grant certificate.
6. Application for certificate.
7. Procedure on application.
8. Contents of certificate.
9. Requisition of security from grantee of certificate.
10. Extension of certificate.
11. Forms of certificate and extended certificate.
12. Amendment of certificate in respect of powers as to securities.
13. Amendment of Act VII, 1870.
14. Mode of collecting court-fees on certificates.
15. Local extent of certificate.
16. Effect of certificate.
17. Effect of certificate granted or extended by British representative in Foreign State.
18. Revocation of certificate.
19. Appeal.
20. Effect on certificate of previous certificate, probate or letters of administration.
21. Effect on certificate of subsequent probate or letters of administration.
22. Validation of certain payments made in good faith to holder of invalid certificate.
23. Prohibition of exercise of certain powers by curators.
24. Effect of certain probates and letters.
25. Effect of decisions under this Act, and liability of holder of certificate thereunder.
26. Investiture of inferior Courts with jurisdiction of District Court for purposes of this Act.
27. Surrender of superseded and invalid certificate.
28. Provisious

SECTION.

28. Provisions with respect to certificates under Bombay Regulation VIII of 1827.

THE FIRST SCHEDULE.—ENACTMENTS REPEALED.

THE SECOND SCHEDULE.—FORMS OF CERTIFICATE AND EXTENDED CERTIFICATE.

ACT No. VII OF 1889.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.
 (Received the assent of the Governor General on the 8th March,
 1889.)

An Act to facilitate the collection of debts on successions and afford protection to parties paying debts to the representatives of deceased persons.

WHEREAS it is expedient to facilitate the collection of debts on successions and afford protection to parties paying debts to the representatives of deceased persons; It is hereby enacted as follows:—

Title, commencement, extent and application.

1. (1) This Act may be called the Succession Certificate Act, 1889.

(2) It shall come into force on the first day of May, 1889; and

(3) It extends to the whole of British India (inclusive of Upper Burma except the Shan States);

(4) But a certificate shall not be granted thereunder with respect to any debt or security to which a right can be established by probate or letters of administration under the Indian Succession Act, 1865, or by probate of a will to which the Hindu Wills Act, 1870, applies, or by letters of administration with a copy of such a will annexed.

X of 1865.
 XXI of 1870.

Repeal.

2. (1) The enactments specified in the first schedule are repealed to the extent mentioned in the third column thereof.

(2) But nothing in this Act shall affect any certificate granted before the commencement of this Act under Act XXVII of 1860 or any enactment repealed by that Act.

(3) Any

(Sections 3-4.)

V of 1881.

(3) Any enactment except this Act and section 152 of the Probate and Administration Act, 1881, or any document, referring to any enactment repealed by this Act shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

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

Definitions.

XVIII of
1884.

(1) "District Court", subject to the other provisions of this Act and to the provisions of proviso (b) to section 23 of the Punjab Courts Act, 1884, and of any other like enactment for the time being in force, means a Court presided over by a District Judge: and

(2) "security" means—

- (a) any promissory note, debenture, stock or other security of the Government of India;
- (b) any bond, debenture or annuity charged by the Imperial Parliament on the revenues of India;
- (c) any stock or debenture of, or share in, a company or other incorporated institution;
- (d) any debenture or other security for money issued by, or on behalf of, a local authority;
- (e) any other security which the Governor General in Council may, by notification in the Gazette of India, declare to be a security for the purposes of this Act.

4. (1) No Court shall—

- (a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming to be entitled to the effects of the deceased person or to any part thereof, or
- (b) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt,

Proof of representative title a condition precedent to recovery through the Courts of debts from debtors of deceased persons.

except

B

(Sections 5-6.)

except on the production, by the person so claiming, of—

- (i) a probate or letters of administration evidencing the grant to him of administration to the estate of the deceased, or
- (ii) a certificate granted under section 36 or section 37 of the Administrator General's Act, 1874, and having the debt mentioned therein, II of 1874.
or
- (iii) a certificate granted under this Act and having the debt specified therein, or
- (iv) a certificate granted under Act XXVII of 1860 or an enactment repealed by that Act, or
- (v) a certificate granted under the Regulation of the Bombay Code No. VIII of 1827 and, if granted after the commencement of this Act, having the debt specified therein.

(2) The word "debt" in sub-section (1) includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes.

Court having jurisdiction to grant certificate.

5. The District Court within the jurisdiction of which the deceased ordinarily resided at the time of his death, or if at that time he had no fixed place of residence then within the jurisdiction of which any part of the property of the deceased may be found, may grant a certificate under this Act.

Application for certificate.

6. (1) Application for such a certificate must be made to the District Court by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely:— XIV of 18

- (a) the time of the death of the deceased;
- (b) the ordinary residence of the deceased at the time of his death and, if such residence was

•not

(Section 7.)

not within the local limits of the jurisdiction of the Court to which the application is made, then the property of the deceased within those limits;

- (c) the family or other near relatives of the deceased and their respective residences;
- (d) the right in which the petitioner claims;
- (e) the absence of any impediment under section 1, sub-section (4), or under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted; and
- (f) the debts and securities in respect of which the certificate is applied for.

(2) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

7. (1) If the District Court is satisfied that there is ground for entertaining the application, it shall fix a day for the hearing thereof and cause notice of the application and of the day fixed for the hearing—

Procedure on application.

- (a) to be served on any person to whom, in the opinion of the Court, special notice of the application should be given, and
- (b) to be posted on some conspicuous part of the court-house and published in such other manner, if any, as the Court, subject to any rules made by the High Court in this behalf, thinks fit,

and upon the day fixed, or as soon thereafter as may be practicable, shall proceed to decide in a summary manner the right to the certificate.

(2) When the Court decides the right thereto to belong to the applicant, it shall make an order for the grant of the certificate to him.

(3) If

(Sections 8-9.)

(3) If the Court cannot decide the right to the certificate without determining questions of law or fact which seem to it to be too intricate and difficult for determination in a summary proceeding, it may nevertheless grant a certificate to the applicant if he appears to be the person having *prima facie* the best title thereto.

(4) When there are more applicants than one for a certificate and it appears to the Court that more than one of such applicants are interested in the estate of the deceased, the Court may, in deciding to whom the certificate is to be granted, have regard to the extent of interest, and the fitness in other respects, of the applicants.

Contents of
certificate.

8. When the District Court grants a certificate, it shall therein specify the debts and securities set forth in the application for the certificate and may thereby empower the person to whom the certificate is granted—

- (a) to receive interest or dividends on, or
- (b) to negotiate or transfer, or
- (c) both to receive interest or dividends on, and to negotiate or transfer,

the securities or any of them.

Requisition
of security
from grantee
of certificate.

9. (1) The District Court shall in any case in which it proposes to proceed under section 7, sub-section (3) or sub-section (4), and may, in any other case, require, as a condition precedent to the granting of a certificate, that the person to whom it proposes to make the grant shall give to the Judge of the Court, to enure for the benefit of the Judge for the time being, a bond with one or more surety or sureties, or other sufficient security, for rendering an account of debts and securities received by him and for indemnity of persons who may be entitled to the whole or any part of those debts and securities.

(2) The Court may, on application made by peti-
tion

(Sections 10-13.)

tion and on cause shown to its satisfaction, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court thinks fit, assign the bond or other security to some proper person, and that person shall thereupon be entitled to sue thereon in his own name as if it had been originally given to him instead of to the Judge of the Court, and to recover, as trustee for all persons interested, such amount as may be recoverable thereunder.

10. (1) A District Court may from time to time, on the application of the holder of a certificate under this Act, extend the certificate to any debt or security not originally specified therein, and every such extension shall have the same effect as if the debt or security to which the certificate is extended had been originally specified therein.

Extension of certificate.

(2) Upon the extension of a certificate, powers with respect to the receiving of interest or dividends on, or the negotiation or transfer of, any security to which the certificate has been extended may be conferred, and a bond or further bond or other security for the purposes mentioned in the last foregoing section may be required, in the same manner as upon the original grant of a certificate.

11. Certificates shall be granted and extensions of certificates shall be made, as nearly as circumstances admit, in the forms set forth in the second schedule.

Forms of certificate and extended certificate.

12. Where a District Court has not conferred on the holder of a certificate any power with respect to a security specified in the certificate, or has only empowered him to receive interest or dividends on, or to negotiate or transfer, the security, the Court may, on application made by petition and on cause shown to its satisfaction, amend the certificate by conferring any of the powers mentioned in section 8, or by substituting any one for any other of those powers.

Amendment of certificate in respect of powers as to securities.

13. (1) For articles 11 and 12 of the first schedule

Amendment

to

(Section 13.)

of Act VII, 1870, to the Court-fees Act, 1870, the following shall be substituted, namely:—

| Number. | | Proper fee. |
|---|---|--|
| "11. Probate of a will or letters of administration with or without will annexed. | If the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees. | Two per centum on such amount or value: provided that when, after the grant of a certificate under the Succession Certificate Act, 1889, or any enactment repealed by that Act, or under the Regulation of the Bombay Code No. VIII of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant. |
| "12. Certificate under the Succession Certificate Act, 1889. | In any case | Two per centum on the amount or value of any debt or security specified in the certificate under section 8 of the Act, and three per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act. NOTE.—(1) The amount of a debt is its amount, including interest, on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained. (2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act, and, where such a power has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of, |

(Section 14.)

| Number. | | Proper fee. |
|--|--|--|
| <p>“12A. Certificate under the Regulation of the Bombay Code No. VIII of 1827.</p> | | <p>the security, or for both purposes, the value of the security is its market-value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.</p> <p>(1) As regards debts and securities, the same fee as would be payable in respect of a certificate under the Succession Certificate Act, 1889, or in respect of an extension of such a certificate, as the case may be, and</p> <p>(2) as regards other property in respect of which the certificate is granted, two per centum on so much of the amount or value of such property as exceeds one thousand rupees.”</p> |

VII of 1870.

(2) In the Court-fees Act, 1870, section 19, clause viii, for the words and figures “and certificate mentioned in the First Schedule to this Act annexed, No. 12,” the words and figures “and, save as regards debts and securities, a certificate under Bombay Regulation VIII of 1827” shall be substituted.

VII of 1870.

14. (1) Every application for a certificate or for the extension of a certificate must be accompanied by a deposit of a sum equal to the fee payable under the first schedule to the Court-fees Act, 1870, in respect of the certificate or extension applied for.

Mode of collecting court-fees on certificates.

(2) If the application is allowed, the sum deposited by the applicant shall be expended, under the direction of the Court, in the purchase of the stamp to be used for denoting the fee payable as aforesaid.

(3) Any sum received under sub-section (1) and not

(Sections 15-18.)

not expended under sub-section (2) shall be refunded to the person who deposited it.

Local extent
of certificate.

15. A certificate under this Act shall have effect throughout the whole of British India.

Effect of
certificate.

16. Subject to the provisions of this Act, the certificate of the District Court shall, with respect to the debts and securities specified therein, be conclusive as against the persons owing such debts or liable on such securities, and shall, notwithstanding any contravention of section 1, sub-section (4), or other defect, afford full indemnity to all such persons as regards all payments made, or dealings had, in good faith in respect of such debts or securities to or with the person to whom the certificate was granted.

Effect of
certificate
granted or
extended by
British repre-
sentative in
Foreign
State.

17. Where a certificate in the form, as nearly as circumstances admit, of the second schedule has been granted to a resident within a Foreign State by the British representative accredited to the State, or where a certificate so granted has been extended in such form by such representative, the certificate shall, when stamped in accordance with the provisions of the Court-fees Act, 1870, with respect to certificates under this Act, have the same effect in British India as a certificate granted or extended under this Act.

VII of 187

Revocation
of certificate.

18. A certificate granted under this Act may be revoked for any of the following causes, namely :—

- (a) that the proceedings to obtain the certificate were defective in substance ;
- (b) that the certificate was obtained fraudulently by the making of a false suggestion, or by the concealment from the Court of something material to the case ;
- (c) that the certificate was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently ;

(d) that

(Sections 19-21.)

- (d) that the certificate has become useless and inoperative through circumstances ;
- (e) that a decree or order made by a competent Court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked.

19. (1) Subject to the other provisions of this Act, an appeal shall lie to the High Court from an order of a District Court granting, refusing or revoking a certificate under this Act, and the High Court may, if it thinks fit, by its order on the appeal, declare the person to whom the certificate should be granted and direct the District Court, on application being made therefor, to grant it accordingly, in supersession of the certificate, if any, already granted. Appeal.

(2) An appeal under sub-section (1) must be preferred within the time allowed for an appeal under XIV of 1882. the Code of Civil Procedure.

(3) Subject to the provisions of sub-section (1) and of Chapters XLVI and XLVII of the Code of Civil Procedure as applied by section 647 of that Code, an order of a District Court under this Act shall be final.

20. Save as provided by this Act, a certificate granted thereunder in respect of any of the effects of a deceased person shall be invalid if there has been a previous grant of such a certificate or of probate or letters of administration in respect of the estate of the deceased person and if such previous grant is in force. Effect on certificate of previous certificate, probate or letters of administration.

V of 1881. 21. (1) A grant of probate or letters of administration under the Probate and Administration Act, 1881, in respect of an estate shall be deemed to supersede any certificate previously granted under this Act in respect of any debts or securities included in the estate. Effect on certificate of subsequent probate or letters of administration.

(2) When at the time of the grant of the probate or letters any suit or other proceeding instituted by the

(Sections 22-24.)

the holder of the certificate regarding any such debt or security is pending, the person to whom the grant is made shall, on applying to the Court in which the suit or proceeding is pending, be entitled to take the place of the holder of the certificate in the suit or proceeding.

Validation of certain payments made in good faith to holder of invalid certificate.

22. Where a certificate under this Act has been superseded or is invalid by reason of the certificate having been revoked under section 18, or by reason of the grant of a certificate to a person named in an appellate order under section 19, or by reason of a certificate having been previously granted, or by reason of a grant of probate or letters of administration, or for any other cause, all payments made, or dealings had, as regards debts and securities specified in the superseded or invalid certificate, to or with the holder of that certificate in ignorance of its supersession or invalidity, shall be held good against claims under any other certificate or under the probate or letters of administration.

Prohibition of exercise of certain powers by curators.

23. (1) Where a certificate has been granted under this Act or Act XXVII of 1860, or a grant of probate or letters of administration has been made, a curator appointed under Act XIX of 1841 shall not exercise any authority lawfully belonging to the holder of the certificate or to the executor or administrator.

(2) But persons who have paid debts or rents to a curator authorised by a Court to receive them shall be indemnified, and the curator shall be responsible for the payment thereof to the person who has obtained the certificate, probate or letters of administration, as the case may be.

Effect of certain probates and letters.

24. Any probate or letters of administration granted before the first day of April, 1881, by any Supreme or High Court of Judicature, or by the Court of a Recorder in Burma, in any case in which the deceased person was not a British subject within the meaning of that expression as used in the charters

of

(Sections 25-26.)

of the Supreme Courts of Judicature, and in which any assets belonging to him were at the time of his death within the local limits of the jurisdiction of the Court shall, for the purpose of the recovery of debts, the protection of persons paying debts, and the negotiation or transfer of securities included in the estate of the deceased, be deemed to have and to have had the effect which a grant of probate or letters of administration has under the Indian Succession Act, 1865 :

X of 1865.

Provided that nothing in this section shall be construed to validate any disposal of property by an executor or administrator which has before the commencement of this Act been declared by any competent Court to be invalid.

25. No decision under this Act upon any question of right between any parties shall be held to bar the trial of the same question in any suit or in any other proceeding between the same parties, and nothing in this Act shall be construed to affect the liability of any person who may receive the whole or any part of any debt or security, or any interest or dividend on any security, to account therefor to the person lawfully entitled thereto.

Effect of decisions under this Act, and liability of holder of certificate thereunder.

26. (1) The Local Government may, by notification in the official Gazette, invest any Court inferior in grade to a District Court with the functions of a District Court under this Act, and may cancel or vary any such notification.

Investiture of inferior Courts with jurisdiction of District Court for purposes of this Act.

(2) Any inferior Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Court in the exercise of all the powers conferred by this Act upon the District Court, and the provisions of this Act relating to the District Court shall apply to such an inferior Court as if it were a District Court :

Provided that an appeal from any such order of an inferior Court as is mentioned in sub-section (1) of section 19 shall lie to the District Court, and not to the High Court, and that the District Court may, if it

(Sections 27-28.)

it thinks fit, by its order on the appeal, make any such declaration and direction as that sub-section authorises the High Court to make by its order on an appeal from an order of a District Court.

(3) An order of a District Court on an appeal from an order of an inferior Court under the last foregoing sub-section shall, subject to the provisions of Chapters XLVI and XLVII of the Code of Civil Procedure as applied by section 647 of that Code, be final. XIV of 188

(4) The District Court may withdraw any proceedings under this Act from an inferior Court and may either itself dispose of them or transfer them to another such Court established within the local limits of the jurisdiction of the District Court and having authority to dispose of the proceedings.

(5) A notification under sub-section (1) may specify any inferior Court specially or any class of such Courts in any local area.

(6) Any Civil Court which for any of the purposes of any enactment is subordinate to, or subject to the control of, a District Court shall for the purposes of this section be deemed to be a Court inferior in grade to a District Court.

Surrender of superseded and invalid certificates.

27. (1) When a certificate under this Act has been superseded or is invalid from any of the causes mentioned in section 22, the holder thereof shall, on the requisition of the Court which granted it, deliver it up to that Court.

(2) If he wilfully and without reasonable cause omits so to deliver it up, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to three months, or with both.

Provisions with respect to certificates under Bombay Regulation VIII of 1827.

28. Notwithstanding anything in the Regulation of the Bombay Code No. VIII of 1827, the provisions of section 3, section 6, sub-section (1), clause (f), and sections 8, 9, 10, 11, 12, 14, 16, 18, 19, 25, 26 and 27

of

(First Schedule.—Enactments repealed.)

of this Act with respect to certificates under this Act and applications therefor, and of section 98 of the Probate and Administration Act, 1881, with respect to the exhibition of inventories and accounts by executors and administrators, shall, so far as they can be made applicable, apply, respectively, to certificates granted under that Regulation, and applications made for certificates thereunder, after the commencement of this Act, and to the exhibition of inventories and accounts by the holders of such certificates so granted.

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

(See section 2.)

| Number and year. | Subject or title. | Extent of repeal. |
|---|---|--|
| <i>Acts of the Governor General in Council.</i> | | |
| XXVII of 1860 | Collection of debts on successions. | So much as has not been repealed. |
| XIV of 1869 | Bombay Civil Courts Act, 1869. | In section 16, from and inclusive of the words and figures "Bombay Regulation VIII of 1827" down to and inclusive of the words "representatives of deceased persons) and". |
| XV of 1874 | Laws Local Extent Act, 1874. | So much as relates to Act XXVII of 1860. |
| XIII of 1879 | Oudh Civil Courts Act, 1879. | Section 25, clause (3), relating to applications for certificates under Act XXVII of 1860. |
| V of 1881 | Probate and Administration Act, 1881. | Sections 151 and 153. |
| XVIII of 1884 | Punjab Courts Act, 1884. | Section 29, sub-section (1), clause (a). |
| XII of 1887 | Bengal, North-Western Provinces and Assam Civil Courts Act, 1887. | Section 23, sub-section (2), clause (c). |

Act

(The First Schedule.—Enactments repealed. The Second Schedule.—Forms of Certificate and Extended Certificate.)

THE FIRST SCHEDULE—continued.

| Number and year. | Subject or title. | Extent of repeal. |
|---|-------------------------------------|---|
| <i>Act of the Lieutenant-Governor of Bengal in Council.</i> | | |
| VII of 1880 . . . | Public Demands' Recovery Act, 1880. | In section 7, clause (3), the words "and the note to paragraph 12 of Schedule I". |

THE SECOND SCHEDULE.

FORMS OF CERTIFICATE AND EXTENDED CERTIFICATE.

(See section 11.)

In the Court of

To A. B.

Whereas you applied on the _____ day of _____ for a certificate under the Succession Certificate Act, 1889, in respect of the following debts and securities, namely:—

Debts.

| Serial number. | Name of debtor. | Amount of debt, including interest, on date of application for certificate. | Description and date of instrument, if any, by which the debt is secured. |
|----------------|-----------------|---|---|
| | | | |

Securities.

| Serial number. | DESCRIPTION. | | | Market-value of security on date of application for certificate. |
|----------------|--|-----------------------------------|----------------------------------|--|
| | Distinguishing number or letter of security. | Name, title or class of security. | Amount or par value of security. | |
| | | | | |

This

(The Second Schedule.—Forms of Certificate and Extended Certificate.)

This certificate is accordingly granted to you and empowers you to collect those debts [and] [to receive] [interest] [dividends] [on] [to negotiate] [to transfer] [those securities].

Dated this _____ day of _____

District Judge.

In the Court of _____

On the application of *A. B.* made to me on the _____ day of _____, I hereby extend this certificate to the following debts and securities, namely:—

Debts.

| Serial number. | Name of debtor. | Amount of debt, including interest, on date of application for extension. | Description and date of instrument, if any, by which the debt is secured. |
|----------------|-----------------|---|---|
| | | | |

Securities.

| Serial number. | DESCRIPTION. | | | Market-value of security on date of application for extension. |
|----------------|--|-----------------------------------|----------------------------------|--|
| | Distinguishing number or letter of security. | Name, title or class of security. | Amount or par value of security. | |
| | | | | |

This extension empowers *A. B.* to collect those debts [and] [to receive] [interest] [dividends] [on] [to negotiate] [to transfer] [those securities].

Dated this _____ day of _____

District Judge.