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THE
CUSTODY AND PRESERVATION
OF THE
PROPERTY IN INDIA
OF
DECEASED PERSONS
AND
THE REPRESENTATION OF THEIR ESTATES



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PREFACE.

I HAVE collected together in these few pages the portions of Legislative enactments and one or two cases which bear upon the law on the subject of the Preservation of the Property in India of Deceased Persons not Hindus, Muhammadans, or Buddhists; and the Representation of their Estates. More than this I have not attempted.

The duties of an executor or administrator cannot be discussed within the limits of a small pamphlet. So far as regards the estates of persons domiciled or having landed property in British India, the subject is dealt with by the Indian Succession Act (X. of 1865). This Act is, however, of limited application, and even in matters of procedure it is very imperfect. For further information I would refer to the Treatise of Mr. Justice Williams on the Law relating to Executors and Administrators in England, and the standard works on the practice of the Ecclesiastical Courts, for I apprehend that where the Indian Succession Act is silent, reference must be made to the established practice of those Courts as adopted by the High Courts in this country. If it were not so, great confusion would arise from each District Court inaugurating a practice of its own; and one of the main objects of the Act, which is part of the Code of Laws for India, would be defeated.

My object is to enable persons who have the misfortune to lose their relatives in this country, to take the proper means to protect the property of the deceased, and to realize it to the best advantage by immediate action.

L. BROUGHTON.

CALCUTTA,

November, 1872.

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THE CUSTODY AND PRESERVATION OF THE PROPERTY IN INDIA OF
DECEASED PERSONS NOT HINDUS, MUHAMMADANS, &C.

When any person, not a Hindu, Muhammadan, or Buddhist, or exempted by the Governor-General in Council from the operation of the Indian Succession Act,* dies leaving "assets" in India, it is the duty of the "Judge of the District" (Act XXIV. of 1867, § 61) within which the assets are locally situated at the time of the death, to take charge of them, and this is always the case, whether the deceased has left a Will or died intestate.

But where the deceased was an officer or soldier, and *died on service*, the Judge should not interfere, but the "effects" should be taken charge of by a Committee of Adjustment, and dealt with as required by the Regimental Debts Act, XXVI. and XXVII. Vic., c. 57. This Act will be fully referred to hereafter.

The word "assets" includes immovable as well as movable property (Act XXIV. of 1867, § 3).

The words "District Judge" mean the Judge of a principal Court of original jurisdiction (*ib.*; and Act X. of 1865, § 3).

The District Judge is to report the case to the Administrator-General of the Presidency (Act XXIV. of 1867, § 61).

Section 239 of the Indian Succession Act (X. of 1865) moreover provides that until probate be granted of the Will of a deceased person (of the class already described), or an administrator to his estate be constituted, the District Judge within whose jurisdiction any part of the property of the deceased person is situate, is authorized and required to

* The Indian Succession Act, Section 332, gives power to the Governor-General in Council to exempt any race, sect, or tribe in British India from the operation of the Act. All orders, and revocations of orders, made under this section must be published in the *Gazette of India*. No such orders, &c., have hitherto been published (Sept., 1872).



interfere for the protection of such property, at the instance of any person claiming to be interested therein, and in all other cases where the Judge considers that the property incurs any risk of loss or damage; and for that purpose he shall appoint an officer to take and keep possession of the property.

There are various other enactments of the same purport.

For the protection of the property of the deceased when forcible possession has been or, it is feared, will be taken by one who has no title to it, a curator can be appointed by the District Judge on the application of any agent, relative, or near friend (Act XIX. of 1841, § 2). This application must be made within six months of the date of the decease of the proprietor whose property is claimed (§ 14), and must be supported by evidence (§ 3).

Again, when any person shall have died leaving assets *within the local limits of the High Court at the Presidency Town*, it shall be lawful for the Court, upon the application of any person interested in such assets, or in the due administration thereof, either as a creditor, legatee, next-of-kin, or otherwise, or upon the application of a friend of any minor who may be so interested, or upon the application of the Administrator-General, if the applicant shall satisfy the Court that danger is to be apprehended of the misappropriation, deterioration, or waste of such assets, unless letters of administration of the effects of such person are granted, to make an order, upon such terms as to indemnifying the Administrator-General against costs and other expenses as to the Court shall seem fit, directing the Administrator-General to apply for letters of administration of the effects of such person (Act XXIV. of 1867, § 17).

Or, in a similar case, if the High Court shall be satisfied that danger is to be apprehended of the misappropriation, deterioration, or waste of such property before it can be ascertained who may be legally entitled to the succession to such property, or whether the Administrator-General is entitled to letters of administration to such deceased person, it shall be lawful for the Court to authorize and enjoin the Administrator-General to collect and take possession of such property, and to hold or deposit or invest the same, according to the orders and directions of the Court, or according to the rules of his office in default of such directions (§ 18).



And Act X. of 1865, Section 224, gives powers to the District Court to grant letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate subject to the directions of the Court.

In case of a death, therefore, persons interested in the preservation of the property of the deceased in India should at once communicate with the Judge of the district in which any of it is situated, or with the Commanding Officer of the station where his regiment was quartered, as the case may be, and with the Administrator-General of the Presidency.

They should state the full name and occupation of the deceased—his nationality—the date and place of his death—the nature and amount of any property he may have left in the district in question, or in any other part of India: whether there is or is not a Will; if so, where it is; the names and addresses of the witnesses and executors: if there is no Will, they should give the names and addresses of the next-of-kin of the deceased, &c., so far as they are themselves informed on these matters.

It is also very important, with reference to the stamp duty, that the person who is to represent the estate should know, as soon as possible, the value of the assets, movable and immovable, as accurately as it can be ascertained; for until he has this knowledge he cannot apply for probate or letters of administration. The Court Fees Act, No. VII. of 1870, Schedule 1, Clauses 11 and 12, imposes a stamp duty of 2 per cent. upon the assets if they exceed 1,000 rupees, and there is no provision in the Act for any adjustment of the stamp duty after the grant has been made. It must be paid in full at once, and no refund can be made. If the assets do not exceed 1,000 rupees, no stamp is required.



THE REALIZATION, WITHOUT PROBATE OR LETTERS OF ADMINISTRATION, OF ASSETS NOT BEING OF GREATER VALUE THAN RS. 1,000, INCLUDING SMALL SUMS DEPOSITED IN THE GOVERNMENT SAVINGS' BANKS, AND WHETHER THERE IS A WILL OR NOT.

If the whole of the assets do not exceed in value Rs. 1,000, any person entitled as executor, as widow, or to administer in any capacity save as a creditor, may apply at once, in writing, to the Administrator-General of the Presidency for a certificate, and on satisfactory proof of the representative right, a certificate can be granted entitling the claimant to receive the sums or securities for money therein severally mentioned (Act XXIV. of 1867, § 34).

A creditor can, in like manner, obtain a certificate from the Administrator-General, where the assets do not exceed in value 1,000 rupees, if no person claiming, otherwise than as a creditor, to be entitled to a share of the effects of the deceased shall, within three months from the date of death, obtain a certificate from the Administrator-General, or letters of administration; or the Administrator-General may himself administer without letters of administration (§ 35).

The applicant must make out his title, and prove the value of the assets, to the satisfaction of the Administrator-General (§ 36).

A copy of the certificate, with a receipt annexed, both signed by the certificate-holder, constitute a good discharge for payment to the certificate-holder of any money, or for the delivery to him of any security mentioned in the certificate (§ 37).

But no certificate can be granted when probate or letters of administration have been obtained, or in respect of any sum of money deposited in a Government Savings' Bank (§ 34).

With regard to money deposited in a Government Savings' Bank, where the depositor dies, and the deposit does not exceed 500 rupees, and probate of his Will, letters of administration, or a certificate under Act XXVII. of 1860, shall not be produced to the Secretary of the Bank within two months from the death of the depositor, the Secretary may pay the money to any person who may appear to him entitled to receive it, and he may administer an oath or affirmation to any person claiming to be entitled, and take security for the due administration and distribution of the money so paid (Act XXVI. of 1855, §§ 1, 2, and 3).



An executor or administrator of a deceased depositor is entitled to receive any sum in the hands of the person so receiving the deposit from the Secretary of the Bank, deducting any part of it lawfully paid away in due course of administration, and a creditor may recover his debt against the person so receiving the deposit, as if he had obtained letters of administration (§ 1).

The certificate under Act XXVII. of 1860, above referred to, is granted by a Judge, and is distinct from the certificate granted by an Administrator-General under Act XXIV. of 1867 ; it is only given now in native cases, for Act XXVII. of 1860 is repealed by Act XXIV. of 1867, Section 2, except so far as it relates to Hindus, Muhammadans, Buddhists, and persons exempted by the Governor-General in Council from the operation of the Indian Succession Act.

It will be observed that the Secretary of the Savings' Bank can only pay over a deposit *not exceeding 500 rupees*. When it exceeds that amount, the estate of the deceased depositor must be represented ; or the Administrator-General may realize it, and deal with it in due course of administration without probate or letters of administration, where the entire assets do not exceed 1,000 rupees (Act XXIV. of 1867, § 35).

Act XXVI. of 1855 does not apply to Savings' Bank deposits made by officers or soldiers dying on service, &c. (§ 5) ; they can be realized by the Committee of Adjustment under the Regimental Debts Act, XXVI. and XXVII. Vic., c. 57, § 8 ; or where the estate is made over to the Administrator-General under Section 21 of that Act of Parliament, he can realize the deposit in the Savings' Bank under Act XXIV. of 1867 ; or when the widow or next-of-kin of the deceased pays the preferential debts, and the estate is represented by a private executor or administrator, it can be realized by him.

These provisions relating to Savings' Banks are, I believe, carried out in practice. It may be a question whether they do not clash with the Indian Succession Act.

Where persons die intestate in the Presidency Towns, leaving property under 200 rupees in value, the police authorities are empowered to take charge of it and to deliver it over to any person showing a right to it, without letters of administration (Act XIII. of 1856, § 113, and the Bengal Act IV. of 1866, § 100 ; Madras Act VIII. of 1867).



THE ADMINISTRATOR-GENERAL, HIS DUTIES AND POWERS.

There are three Administrators-General in British India, one for each of the Presidencies of Bengal, Madras, and Bombay (Act XXIV. of 1867, § 4). Their offices are at Calcutta, Madras, and Bombay, respectively.

They are appointed by the Governor-General in Council, the Government of Fort St. George or of Bombay, as the case may be (§ 5) ; and must be members of the Bar of England or Ireland, or of the faculty of Advocates in Scotland (§ 6). They are not officers of Court (§ 7).

The Presidency of Bengal includes, for this purpose (§ 3), the territories which are or shall for the time being be respectively under the governments of the Lieutenant-Governor of Bengal, the North-Western Provinces, and the Punjab, and under the administrations of the Chief Commissioners of Oudh, the Central Provinces, and British Burmah.

The Presidency of Madras includes the territories which are or shall for the time being be under the government of the Governor of Fort St. George in Council, Coorg, and also, so far as regards British subjects, Mysor (*ib.* ; and eAct XIX. of 1869, § 1).

The Presidency of Bombay means the territories which are or shall for the time being be under the government of the Governor of Bombay in Council, and, so far as regards British subjects, the Hyderabad Assigned Districts (*ib.* ; and Act XIX. of 1869, § 1).

An Administrator-General is not required to enter into an administration bond, or to give other security to the Court on the grant of any letters of administration to him in virtue of his office (§ 12) ; but he is required, upon his appointment, to give a general security to the Secretary of State for India for a lakh of rupees by his own bond, and for another lakh by the bond of two sureties, or by a deposit of Government securities, or both (§ 11).

In ordinary cases, a person proving a Will, or obtaining letters of administration, must do so in every province in which the deceased person left assets, for the grant is of no validity out of the province in which it was obtained (see Act X. of 1865, §§ 187 and 190) : and this rule is not affected by the Indian Evidence Act, No. I. of 1872 ; for although that Act (§§ 41 and 91, cl. 2) declares that probate or letters of

administration are evidence, Section 2 also declares that nothing in the Act shall be deemed to affect any Statute, Act, or Regulation in force in any part of British India and not thereby expressly repealed.

A "province" means any division of British India having a Court of last resort (Act X. of 1865, § 3). Thus, the Punjab, the North-Western Provinces, Oudh, the Central Provinces, Lower Bengal, and British Burmah, are all separate provinces, and a separate grant would be required to realize assets in each, where the representative is a private individual ; but they are all comprised in the "Presidency," as used in the Administrator-General's Act ; and letters of administration, or probate granted to the Administrator-General of Bengal by the High Court at Calcutta, enable him to realize assets in the estate for which the grant has been made, wherever they may be situated within the Presidency of Bengal, as already defined (Act XXIV. of 1867, § 14).

The duties of the Administrators-General, and their powers, will be found set out at length in Act XXIV. of 1867 of the Governor-General of India in Council. But it may here be shortly stated, that under Section 15 of that enactment, the Administrator-General is entitled to letters of administration, unless granted to an universal legatee or to the nearest-of-kin, that is, the nearest-of-kin absolutely, not merely the nearest-of-kin in India,—in the goods of *Smallwood*, per Norman J., July 20th, 1868, where a brother, the nearest-of-kin in India, was held not to be entitled in priority to the Administrator-General, there being a father and mother alive in England.

By Section 16 he is required, within a reasonable time after he shall have had notice of the death, and that the deceased has left assets within the Presidency (as defined, p. 6), to take steps to apply to the High Court for letters of administration, and this, whether the deceased has left a Will or not : provided that the assets are of greater value than Rs. 1,000, and that no person shall, within a month after the death, have applied in such Presidency for probate of a Will, or for any letters of administration of the estate ; that is to say, no person to whom the Court could have given letters of administration which would be effectual as regards the assets for which administration is sought,—in the goods of *Duncan*, 1 Bengal L. R., Original Jurisdiction, 3. Thus, the High Court in Bengal could not grant probate or letters to the executor or next-of-kin in Burmah, so as to enable him to represent

the estate in that province, and the Administrator-General would have priority, unless the executor or next-of-kin were to go to Burmah, or appoint an attorney resident there, to make an application to a District Court in that province ; for the attorney of an absent executor, administrator, or next-of-kin is entitled, under 55 Geo. III., c. 84, to administer to the estate in preference to the Administrator-General (see also Act X. of 1865, §§ 212-213) ; but the attorney must be within the jurisdiction of the Court,—in the goods of *Nesbitt* and of *Briant*, 4 Bengal L. R., Appendix, p. 49.

But there is nothing to prevent the Administrator-General from applying to the Court for letters of administration in any case within the period of one month from the death of the deceased (Act XXIV. of 1867, § 22).

Where a person, with inferior right to the Administrator-General, applies for letters of administration, the Court should cite the Administrator-General, and it should in all cases cite all persons having rights superior to the person applying (see as to this, Act X. of 1865, § 350 ; and Williams on Executors, 6th ed., p. 317, and p. 424, note k.)

If the assets do not exceed Rs. 1,000 in value in the whole, the Administrator-General is not bound to act ; but he may either grant a certificate to some persons entitled, or take charge of the estate himself, without letters of administration, under Act XXIV. of 1867, §§ 34, 35, &c.

Letters of administration or probate granted to an Administrator-General in his official capacity, authorize the person filling the office for the time being to act as administrator or executor of the estate to which such letters of administration or probate shall relate (§§ 28-29) ; and all estates, &c., vested in the Administrator-General, all his books, &c., become vested in and transferred to his successor in office (§ 31).

Any private executor or administrator may, with the consent of the Administrator-General of the Presidency in which the property comprised in the probate or letters of administration is situate, by an instrument in writing under his hand, bearing a stamp of ten rupees, and notified in the local Gazette, transfer the estates, &c., vested in him by virtue of such probate or letters to the Administrator-General by his name of office ; and thereupon the transferor becomes exempt from all future liability. His future rights and responsibilities are transferred



to the Administrator-General. But the transferor remains liable for all his acts and omissions in respect of the property prior to the transfer (§ 30).

As soon as the Administrator-General takes charge of the estate, the fact is advertized in the Gazette and in the public papers, and creditors are called upon to prove their claims. They should state the amounts and other particulars, and support their claims by such evidence as (under the circumstances of the case) the Administrator-General is reasonably entitled to require. If a claimant fail to do this within one month of the date of the institution of any suit he may bring against the Administrator-General in respect of his claim, he will be liable, in any event, to pay the costs of the suit, and he will not be entitled to have his decree enforced. If he obtain judgment, he will be entitled only to payment out of the assets rateably with the other creditors (§ 33).

All suits brought against the Administrator-General should make him defendant by his name of office; no such suit will abate by reason of the death, resignation, or removal of the person holding the office, but it may be revived against his successor by order of Court. The successor will not be personally liable for any costs incurred prior to the order for continuing the suit (§ 32).

The Administrator-General, like every other executor or administrator, is bound to keep the assets for a reasonable time, to answer the claims of creditors. This time is fixed by the law generally at one year (Wms. Exors., 6th ed., p. 1286); but where the case permits of it, the account can be closed earlier. Like any other executor or administrator, he is bound to pay all creditors rateably or preferentially, according to the law governing the distribution; after the expiration of a year from the date of his administration, no claim can be made upon him in respect of any assets paid or delivered by him to any legatee, or to any person entitled in distribution without notice of the claim (§ 27).

Under the Indian Succession Act, the following payments only may be made in preference, viz. :—Funeral expenses, death-bed charges, fees for medical attendance, board and lodging for one month prior to death.



Expenses of obtaining probate or letters of administration, including the costs of any judicial proceedings necessary for administering the estate, rank next, and then wages for services rendered to the deceased within three months next preceding his death, by any laborer, artisan, or domestic servant; all other debts are on an equal footing (Act X. of 1865, §§ 279, 280, 281, and 282). These rules apply in all cases where the assets consist of immovable property in British India; where they consist of movable property, the law of the country in which the deceased was domiciled prevails (§ 283); but no creditor who obtains a part payment in preference to others by reason of this rule, can share in the proceeds of any immovable property of the deceased without bringing such payment into account (§ 286).

The Administrator-General is bound to keep accounts as prescribed by the Act, and to allow persons entitled so to do to inspect them on payment of a reasonable fee fixed by Government (Act XXIV. of 1867, § 41); he is bound to furnish half-yearly schedules of the estates under his charge in forms prescribed by the Act; these schedules are published in the Gazette of the Presidency. Three copies are sent to the Government for transmission to the Secretary of State for India, for the information of persons in England who are interested in the matter (§ 42). The cost of preparing and publishing these schedules is thrown by the Act upon the different estates (§ 46); but, in practice, they are relieved of this burthen by the Audit Fund under Rule III., cl. 4, and Rule IX., cl. 2, of the Rules for the guidance of the Administrators-General, &c. In Bengal the Audit Fund is sufficient to cover the whole of the expenses of preparing and publishing the schedules.

By Rule III., cl. 2, whenever the cash balance belonging to any estate shall amount to Rs. 500 after providing for ascertained current demands, it shall be invested by the Administrator-General in Government securities.

By Rule VI., his remittances to England are to be made to the Treasury at the India Office by Government bills, at the rate of exchange annually agreed upon with Her Majesty's Government for the repayment of advances made in India.

The Administrator-General of Bengal is entitled to a commission of 3 per cent., and the Administrator-General of Bombay or Madras





to a commission of 5 per cent. (§ 50), except in the case of the estates of officers and soldiers, when the commission is uniformly 3 per cent. on the assets after payment of the preferential charges (§§ 21 and 51). This commission is to cover the expenses of his establishment ; but he is entitled to reimburse himself, in addition, for any payments made by him in respect of any estate in his charge, which a private administrator of such estate might have lawfully made (§ 52).

No person other than an Administrator-General acting officially is entitled to any commission or agency charges for anything done as executor or administrator under any probate or letters of administration granted by the Supreme or High Court in Bengal since the passing of Act VII. of 1849 ; or by the like Courts in Madras or Bombay since the passing of Act II. of 1850 ; or by any Court under the Indian Succession Act, 1865. But this does not affect any bequest made to any person in his character of executor, or by way of commission or otherwise (§ 54).

SEARCH FOR, AND TRANSMISSION OF, TESTAMENTARY PAPERS FOR THE
PURPOSE OF PROOF IN INDIA.

The property being secured, steps should be taken to ascertain whether the deceased has left a Will, or has died intestate.

As succession to the immovable property in India of a person deceased (being of the class already mentioned, p. 1) is regulated by the law of British India wherever he may have had his domicile at the time of his death (Indian Succession Act, § 5), it follows that the law of British India must be complied with in the case of immovable property in British India—first, in determining the validity of the Will, should there be one ; second, in the construction of the Will ; and third, in case of intestacy, in determining the persons among whom the property is to be divided.

But as the same Section declares that succession to the movable property of a person deceased is regulated by the law of the country in which he had his domicile at the time of his death, it is necessary, where the property is movable, to determine in the first instance what was the domicile of the deceased person.

In the first place it is to be observed, that if a man dies leaving movable property in British India, in the absence of proof of any domicile elsewhere, succession to the property is regulated by the law of British India (see § 19). And when the deceased was domiciled in British India, was of the class already referred to, and the death occurred, or the Will was dated, after January 1, 1866, the Indian Succession Act applies (§ 331).

Where proof of another domicile is offered, some general rules for its determination are laid down in Part II. of the same Act. The first of these is, that a person can have only one domicile for the purpose of succession to his movable property (§ 6). The domicile of origin of every person of legitimate birth is in the country in which, at the time of his birth, his father was domiciled; or if he is a posthumous child, in the country in which his father was domiciled at the time of his father's death; and the domicile of origin of an illegitimate child is the country in which, at the time of his birth, his mother was domiciled (§§ 7 and 8). The domicile of origin prevails until a new domicile has been acquired (§ 9).

A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin (§ 10). The word "fixed" is to be observed, for a man is not to be considered as having taken up his fixed habitation in India merely by reason of his residing there in Her Majesty's civil or military service, or in the exercise of any profession or calling (*ib.* Explanation). The question is, firstly, whether he intends to take up his residence in the country; and, secondly, whether he actually does so.

A person may acquire a domicile in British India by making and depositing in some office in British India, to be fixed by the local Government, a declaration in writing under his hand, of his desire to acquire such domicile: provided that he shall have been resident in British India for one year immediately preceding the time of his making such declaration (§ 11.) But ambassadors, consuls, or representatives of a foreign country, or their servants, do not acquire a domicile merely by residence in the country to which they are sent (§ 12). A new domicile continues till the former domicile has been resumed, or another acquired (§ 13). The domicile of a minor follows that of the parent, from whom he derives the domicile of origin; but it does not change with that of his parent, if the

minor is married, or holds any office or employment in the service of Her Majesty, or has set up, with the consent of the parent, in any distinct business (§ 14). By marriage a woman acquires the domicile of her husband, if she had not that domicile before (§ 15); and during the marriage her domicile follows that of her husband (§ 16), unless they be separated by the sentence of a competent Court, or the husband be undergoing a sentence of transportation (*ib.* Exception). Except in the cases above provided for, a minor cannot (under the Indian Succession Act, and so far as its authority extends) acquire a new domicile (§ 17); nor can an insane person in any other way than by his domicile following that of another person (§ 18).

These sections still fail to define the meaning of the word *domicile*. The place of a man's domicile may perhaps be understood to mean his country or home, as may be determined upon the evidence of fact and of intention which is adduced.

As it is often not easy to determine at first whether a document purporting to be a Will has been properly executed, care should be taken to search for *every document that can be considered of a testamentary nature*, and any such document should be forwarded to the District Judge or to the Commanding Officer, as the case may be; a full and true copy, certified as correct by a Magistrate, or some other responsible person (who can testify to its correctness in case of the loss of the original), being retained by the sender. The full names and addresses of the attesting witnesses should be communicated at the same time.

If there is a Will, and the executor resides, and there are also assets, in another country—in the United Kingdom, for example—the Will should first be proved there, and an exemplification of the probate, or confirmation, (if the property is situated in Scotland), should be sent to the person who is to represent the estate in India; if to the Administrator-General, no power-of-attorney is required, a simple letter of request is enough; and in the same way, in case of an intestacy, no power is required to enable the Administrator-General to act



THE REPRESENTATION OF THE ESTATE. GENERAL RULES.

The general course which must be adopted when the assets are over Rs. 1,000 in value, is to apply to a District Court within the province for probate of the Will or for letters of administration. The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property of the deceased person vests in him as such (Act X. of 1865, § 179).

The same course may be pursued when the assets do not exceed Rs. 1,000 in value, or the course described at page 4 may be taken.

The probate of the Will or letters of administration have effect over all the property and estate, movable and immovable, of the deceased, throughout the province in which the same is granted, and are conclusive as to the representative title against all debtors of the deceased and all persons holding property which belongs to him, and afford full indemnity to all debtors paying their debts, and all persons delivering up property to the person to whom such probate or letters of administration shall have been granted (§ 242).

And after the grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise to act as representative of the deceased throughout the province in which the same may have been granted, until such probate or letters of administration have been recalled or revoked (§ 260).

No probate or letters of administration can be granted to a person under eighteen years of age, or of unsound mind, nor to a married woman without the previous consent of her husband (§§ 3, 183, and 189); but when that consent has been obtained, and probate or letters of administration granted to her, she has all the powers of an ordinary executor or administrator (§ 275).

Where a minor is sole executor or sole residuary legatee, letters of administration, with the Will annexed, may be granted to the legal guardian of such minor, or to such other person as the Court shall think fit, until the minor shall have completed the age of eighteen years, at which period, and not before, probate shall be granted to him (§ 215). If there are two or more minor executors, and no executor who has attained majority, or two or more residuary legatees,



and no residuary legatee who has obtained majority, the grant shall be limited until one of them shall have completed the age of eighteen years (§ 216).

If a sole executor, or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates' estates, be a lunatic, letters of administration, with or without the Will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the Court may think fit to appoint, for the use and benefit of the lunatic until he shall become of sound mind (§ 217).

No right as executor or legatee under a Will, or to any part of the property of a person who has died intestate, can be established in any Court of justice, unless a Court of competent jurisdiction within the province shall have granted probate or letters of administration (§§ 187, 190); so that a power-of-attorney from an executor or administrator, constituted by a competent Court without the province—as for instance the Court of Probate in England—is not of itself sufficient to enable the holder of it to realize assets in the particular province in India, or to give a good receipt for them. And this rule is not affected by the Indian Evidence Act, Section 41 (which makes probate or letters of administration conclusive evidence), nor by Section 91, Explanation 2, of the same Act, for Section 2 provides that nothing in the Act shall be deemed to affect any provision of any Statute, Act, or Regulation in force in any part of British India and not thereby expressly repealed.

PROBATE OF THE WILL BY THE EXECUTOR.

Probate, which is defined to be “a copy of a Will, certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator,” can be granted only to an executor appointed by the Will (Act X. of 1865, §§ 3, 181), either expressly or impliedly (§ 182). Thus, if A wills that C be his executor if B will not, B is appointed executor by implication. Again, where A gives a legacy to B, and several legacies to other persons, among the rest to C, “but should C not be living, I constitute B my sole executor,” C is appointed executor by implication. Again, A appoints several

persons executors of his Will and Codicils, and his nephew residuary legatee, and in another Codicil are these words :—" I appoint my nephew my residuary legatee, to discharge all lawful demands against my Will and Codicils signed of different dates." The nephew is appointed executor by implication (*ib.*) These are the cases given as illustrations to the section last quoted ; other cases will occur in which the plain intention of the testator points to some person as executor.

The application for probate must have the Will annexed to it ; must state the date of the death of the deceased ; that the writing annexed is his last Will ; that it was duly executed ; and that the petitioner is the executor therein named. When it is made to a District Judge, it must state that the deceased had, at the time of his death, his fixed place of abode, or some of his property, movable or immovable, within the jurisdiction of the Judge (§ 244).

It must be signed by the executor applying, and his pleader, if any : and it must be verified by the petitioner in manner following, or to the like effect :—" I, (A. B.,) the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief" (§ 247) ; and by at least one of the witnesses to the Will, when procurable, in manner following, or to the like effect :—" I, (C.D.,) one of the witnesses to the last Will and testament of the testator mentioned in the above petition, declare that I was present and saw the testator affix his signature (or mark) thereto (*as the case may be*), (or that the said testator acknowledged the writing annexed to the above petition to be his last Will and testament in my presence)" (§ 248). There are some cases in which these requirements manifestly cannot be complied with. Thus, when the Will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident, and not by any act of the testator, and a copy or the draft of the Will has been preserved, probate may be granted of such copy or draft, limited until the original, or a properly authenticated copy of it, be produced (§ 208). When the Will has been lost or destroyed, and no copy has been made nor the draft preserved, probate may be granted of its contents, if they can be established by evidence (§ 209) ; and when the Will is in the possession of a person, residing out of the province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for

the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the Will, or an authenticated copy of it, be produced (§ 210).

When several executors are appointed, probate may be granted to them all simultaneously or at different times (§ 184).

If a Codicil is discovered after the grant of probate, a separate probate of that Codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the Will. If different executors are appointed by the Codicil, the probate of the Will must be revoked, and a new probate granted of the Will and the Codicil together (§ 185).

When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors (§ 186).

When an executor is appointed by a Will for a particular purpose, probate is granted limited for that purpose (§ 219).

Probate cannot be granted until after the expiration of seven clear days from the day of the testator's death (§ 258); when granted, it establishes the Will from the death of the deceased, and renders valid all intermediate acts of the executor as such (§ 188).

LETTERS OF ADMINISTRATION, WITH A COPY OF THE WILL ANNEXED.

Where the Will has been proved in a Court of competent jurisdiction, situated beyond the limits of the province, whether in the British dominions or in a foreign country, and a properly authenticated copy of the Will is produced, letters of administration may be granted with a copy of such copy annexed (Act X. of 1865, § 180).

When a person appointed executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation be issued calling upon the executor to accept or renounce his executorship; except that where one or more of several executors have proved a Will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved (§ 193).



The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and, when made, shall preclude him from ever thereafter applying for probate of the Will appointing him executor (§ 194).

In practice, when the executor renounces, and he has to forward his renunciation to a distance, he should renounce in the presence of a Magistrate, and get him to attest the renunciation in his official character, and seal it with the seal of his Court.

If the executor renounce, or fail to accept the executorship, within the time limited for the acceptance or refusal thereof, the Will may be proved, and letters of administration, with a copy of the Will annexed, may be granted to the person who would be entitled to administration in case of intestacy (§ 195).

When the deceased has made a Will but has not appointed an executor, or when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator or before he has proved the Will, or when the executor dies after having proved the Will, but before he has administered all the estate of the deceased, a universal or a residuary legatee may be admitted to prove the Will, and letters of administration, with the Will annexed, may be granted to him of the whole estate, or so much thereof as may be unadministered (§ 196).

When a residuary legatee, who has a beneficial interest, survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration, with the Will annexed, as such residuary legatee (§ 197).

When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate, if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the Will, and letters of administration may be granted to him or them accordingly (§ 198).

Letters of administration, with the Will annexed, shall not be granted to any legatee, other than a universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration (§ 199).



The Administrator-General of the Presidency has a right to letters of administration with or without the Will annexed, as the case may be, in preference to a creditor, a legatee other than a universal legatee, or a friend of the deceased (Act XXIV. of 1867, § 15).

LETTERS OF ADMINISTRATION IN CASE OF INTESTACY.

When the deceased has died intestate, those who are connected with him, either by marriage or consanguinity, are entitled to obtain letters of administration of his estate and effects in the following order (Act X. of 1865, § 200).

If the deceased has left a widow, administration shall be granted to the widow, unless the Court shall see cause to exclude her, either on the ground of some personal disqualification, or because she has no interest in the estate of the deceased (§ 201). If the Judge think proper, he may associate any person or persons with the widow in the administration, who would be entitled solely to the administration if there were no widow (§ 202).

If there be no widow, or if the Court see cause to exclude her, it shall commit the administration to the person or persons who would be beneficially entitled to the estate according to the rules for the distribution of an intestate's estate: provided that when the mother of the deceased be one of the class of persons so entitled, she shall be solely entitled to administration (§ 203).

Those who stand in equal degree of kindred to the deceased, are equally entitled to administration (§ 204).

The husband surviving his wife, has the same right with respect to her estate (§ 205).

When there is no person connected with the deceased by marriage or consanguinity who is entitled to letters of administration and willing to act, they may be granted to a creditor (§ 206).

The application for letters of administration should be made by petition properly stamped, and should state the time and place of the death of the deceased; the family or other relatives of the deceased, and their respective residences; the right in which the petitioner claims; that the deceased left some property within the jurisdiction of the District Judge to whom the application is made; and the amount of the assets which



are likely to come to the petitioner's hands (§ 246). The petition should be subscribed by the petitioner, and verified thus :—"I, (A.B.,) the petitioner in the above petition, declare that what is stated therein is true to the best of my knowledge and belief" (§ 247).

Letters of administration cannot be granted until after the expiration of fourteen clear days from the day of the intestate's death (§ 258). They entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death (§ 191), but they do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate (§ 192).

Probate of a Will, or letters of administration with or without the Will annexed, carry a stamp fixed at present at 2 per cent. on the value of the assets in respect of which they are granted; but no stamp is necessary when the assets are under Rs. 1,000 (Act VII. of 1870, schedule 1, clauses 11 and 12). Property which the deceased was possessed of, or entitled to, not beneficially, but as a trustee for any other person or persons, is not to be included in the calculation, unless the trustee has a power of appointing or otherwise conferring a beneficial interest in the trust property (Notification No. 2004, Separate Revenue, dated 14th July, 1871).

Every person, except an Administrator-General, to whom any grant of administration is committed, is called upon to enter into a bond, with two sureties, engaging for the due collection and administration of the assets (Act X. of 1865, § 256). This bond is generally in double the amount of the assets likely to come to his hands, and is stamped with a stamp now fixed at 8 rupees (Act VII. of 1870, schedule 2, clause 16).



ESTATES OF OFFICERS OR SOLDIERS DYING ON SERVICE, DEALT WITH
UNDER THE REGIMENTAL DEBTS ACT, XXVI. AND XXVII. VIC.,
C. 57, AND THE ROYAL WARRANT NO. $\frac{12759}{83}$.

This Act applies only to the estates of officers and soldiers *dying on service*—an expression, which has received no interpretation from the legislature. It has however been considered that the words do not include the case of a military officer in civil employ, who does not draw military pay.

The following observations upon the subject are taken from an opinion of the Advocate-General of Bengal, dated 8th March, 1870 :—

“I believe that in the case of a military officer being transferred to civil employ, he ceases to draw military pay and allowances, receiving in lieu thereof a salary as a civil officer, which he draws in the same way as is done by any civil servant of the Government. If I am right in this supposition, I think that the effects of such officer are not subject to be dealt with under the Regimental Debts Act. It is true that the Act does not contain any definition of the expression ‘dying on service;’ but I think that the Act only contemplated the case of officers who at the time of their death were drawing military pay. There can be no question that military pay is to be understood wherever the Act uses the word ‘pay.’ The 4th section of the Act includes, among the preferential charges, any military clothing, &c., ‘not exceeding a sum equal to six months’ pay of the deceased,’ and also includes ‘sums due to any Paymaster, Quartermaster, or other officer on such accounts;’ and the same section also includes household expenses ‘incurred within a month before the death or after the last issue of pay to the deceased, whichever is the shorter period.’ Again, the 23rd section speaks of deducting in the Pay Office from ‘any arrear of pay due to the deceased.’ These passages in the Act seem to me all to point to a deceased officer who, at the time of his death, was in receipt of military pay. If, on the other hand, a military officer, such as a civil surgeon, does receive military pay during his civil employment, then I think that, whether he receives additional civil pay or not, his effects, on his death, must be dealt with by a Committee of Adjustment under the Regimental Debts Act.”

The object of the Act, after the collection of the effects, is to provide in the first instance for the payment of certain preferential charges, and afterwards for the distribution of the effects.

The effects are to be collected and the preferential charges are to be paid by a committee of officers appointed in the manner prescribed by the Act, and called the Committee of Adjustment. (See §§ 7 and 8.)

The distribution of the surplus after the preferential charges among the other creditors, and of the actual surplus after payment of all debts, is entrusted to an officer appointed to receive it from the Committee of Adjustment after they have paid the preferential charges. (See § 10 and the following sections.)

It may be useful to state shortly the duties of Committees of Adjustment as laid down in the Act, and so far as they apply to India. The Committee are in the first place directed by section 7, immediately on the death on service of the officer or soldier, to secure all such of his effects as are within the station, colony, or command.

Provided that, if the representative (that is, the legal representative in India—a person armed with probate or letters of administration), the widow, or any of the next-of-kin pays in full the preferential charges within a month, the Committee of Adjustment shall not further interfere in relation to the property (§ 8).

The Act does not provide any rule as to the disposal of the property by the Committee, on payment of the preferential charges by the representative, widow, or next-of-kin. But it would seem that the Committee cannot safely make over the assets in such a case to the person paying the preferential claims without representation. The Indian Succession Act requires representation in all cases.

The most ample powers are conferred upon the Committee of Adjustment, enabling them to collect the effects of the deceased person; they can get in and give receipts for all the credits forming part of the estate, and being payable or recoverable in India, and, if they think fit, sue for and recover such credits; and they are directed to sell and convert into money such parts of the effects of the deceased as do not consist of money (§ 8); but medals and decorations are excepted; they are to be disposed of as directed by Section 19 the Royal Warrant. The payments to be made by the Committee are and set out in Section 8; they are—

1. The expenses attending the discharge of their duties.
2. The preferential charges.

The latter are preferential charges on the *personal* property of the deceased, and are payable thereout in preference to all other debts and



liabilities, and, as among themselves, in the order described in the Act.
(See § 4.)

If the Committee are in doubt on any questions respecting the amount, payment, &c., of any preferential charges, they can (in India) refer the matter to the Military Secretary to the Government of the Presidency, whose decision is conclusive and binding on all persons and for all purposes (§ 6).

After payment of the expenses attending the discharge of their duties and the preferential charges, the Committee are to secure the surplus of the effects, or effects and credits, as the case may be, remaining over after all such payments (§ 8).

They are then to remit the surplus as directed by Section 10 and the Royal Warrant, clauses 14 and the following clauses.

It should be noticed that where the deceased was a Regimental Paymaster, the rules are different. The functions of the Committee are not superseded by any payment of the preferential charges by the representative, widow, or next-of-kin. The case of a Regimental Paymaster is provided for by Section 20 of the Act.

THE REGIMENTAL DEBTS ACT, 1863.

An Act to consolidate and amend the Acts relating to the Payment of Regimental Debts, and the distribution of the Effects of Officers and Soldiers in case of Death, and to make like Provision for the Cases of Desertion and Insanity, and other Cases.

[21st July, 1863.]

Whereas it is expedient to consolidate and amend the provisions now in force relating to the payment of regimental debts, and the distribution of the effects of officers and soldiers dying on service, and those provisions having been found beneficial, it is also expedient to make like provision for the security and application of the effects of deserters and others, and of officers and soldiers becoming insane on service :

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and



Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Preliminary.

Short title.

1. This Act may be cited as the Regimental Debts Act, 1863.

Interpretation of terms.

2. In this Act—

The term “officer” means (except where it is otherwise expressed) a commissioned officer of Her Majesty’s Army, or of Her Majesty’s *Indian* Army :

The term “soldier” means (except where it is otherwise expressed) a soldier of Her Majesty’s Army, or a *European* soldier of Her Majesty’s *Indian* Army, including a warrant and a non-commissioned officer :

The term “representation” includes probate, and letters of administration, with or without Will annexed, and the corresponding documents or acts in use according to the law of *Scotland*, or other law in force in any place where this Act operates :

The term “representative” means any person taking out representation :

The term “the Secretary of State for War” means such one of Her Majesty’s Principal Secretaries of State for the time being as Her Majesty thinks fit to intrust with the seals of the War Department :

The term “*India*” means the territories for the time being vested in Her Majesty under the Act of the year 1858, 21 & 22 Vict., c. 106. “for the better government of *India*” :

The term “the Secretary of State for *India* in Council” means one of Her Majesty’s Principal Secretaries of State acting with the Council of *India* under that Act :

The term “person” includes a corporation and any body of persons.

3. The enactments described in the schedule to this Act shall be repealed ; but this repeal shall not affect the past operation of any such enactment, or anything already done, or any right, title, obligation, or liability already accrued thereunder, or any remedy or proceeding for the enforcement thereof.



PART I.—DEATH ON SERVICE.

Preferential Charges.

4. Where an Officer or Soldier dies on Service, the following Definition of Preferential Charges on Property—Military Debts, &c. Classes of Expenses and Debts incurred and owing by him or on his account shall, for the Purposes of this Act, be considered Preferential Charges on his Personal Property, and be payable thereout in Preference to all other Debts and Liabilities, and, as among themselves, in the following Order :—

- (1.) Expenses of last Illness and Funeral :
- (2.) Military Debts, namely, Sums due in respect of—
Quarters ;
Mess, Band, and other Regimental Accounts ;
Military Clothing, Appointments and Equipments, not exceeding a Sum equal to Six Months' Pay of the Deceased, and having become due within Eighteen Months before his Death ;
including Sums due to any Agent, or to any Paymaster, Quartermaster, or other Officer, on any such account, or on account of any Advance made for any such Purpose :
to which shall be added, where the Death occurs out of the *United Kingdom*,—

- (3.) Servants' Wages, not exceeding Two Months' Wages to each Servant :

- (4.) Household Expenses incurred within a Month before the Death or after the Last Issue of Pay to the Deceased, whichever is the shorter Period.

5. The Surplus only of the Personal Property of an Officer or Soldier dying on Service, remaining over after Payment of Preferential Charges, shall be considered the Personal Estate of the Deceased, with reference to the Calculation of Probate Duty, or of any other Tax or Percentage, or for any of the Purposes of Administration or Distribution.



6. If in any Case a Doubt or Difference arises as to any particular Expense or Debt being a Preferential Charge or not,—or as to any alleged Preferential Charge having been in fact incurred, or being due, in the whole or in part, or not,—or as to the Priority among or Payment of any Preferential Charges, where the Property is insufficient to pay all in full, or where those of one Class exceed the Amount allowed for that Class,—or otherwise in relation to any Preferential Charge or the Payment thereof,—the Decision of the Secretary of State for War, where the Death occurs elsewhere than in *India*, and of the Military Secretary to the Government of the Presidency in which the Deceased was quartered, where the Death occurs in *India*, or of such Officer or Person as the Secretary of State or Military Secretary respectively deputes by Writing under his Hand to act for him in this Behalf, shall be final, and shall be binding on all Persons for all Purposes.

Collection and Disposal of Effects.

7. Immediately on the Death of an Officer or Soldier on Service, such Committee of Officers as may be prescribed by Royal Warrant, according to the Circumstances of different Cases, hereinafter called the Committee of Adjustment, shall secure all such of his Effects as—

Where the Death occurs in the *United Kingdom*, are in Camp or Quarters; and

Where the Death occurs out of the *United Kingdom*, are within the Station, Colony, or Command.

8. Provided, that if the Representative of the Deceased, or his Widow (if any), or any of his Next-of-Kin, pays in full the Preferential Charges, the Committee of Adjustment shall not further interfere in relation to the Property.

If Preferential Charges not paid, Power to Committee to sell and convert Effects, and to get in Credits, and, after Payment of Expenses, to secure Surplus.

If such Payment is not made, then, within one Month after the Death, the Committee of Adjustment may and shall, without any Representation taken out, and as if they were the Representatives of the Deceased, and to the Exclusion of all other Authorities and Persons whomsoever, sell or convert into Money such



Parts of the Effects of the Deceased as do not consist of Money,—and also where the Death occurs out of the *United Kingdom*, get in and give Receipts (which shall be effectual Discharges) for all or any of the Credits forming Part of the Estate of the Deceased, and being payable or recoverable in *India*, or in the Colony or Possession in which the Deceased was quartered (as the Case may be), and, if they think fit, sue for and recover any of such Credits,—and, after paying thereout the Expenses attending the Discharge of their Duties, shall pay thereout the Preferential Charges, and secure the Surplus of the Effects, or Effects and Credits, as the Case may be, remaining over after all such Payments.

9. Where the Death occurs in *India*, the Committee of Adjustment may, in such Cases, under such Circumstances, and at such Time or Times, as may be prescribed by Royal Warrant, according to the Circumstances of different Cases, deliver over the Effects secured by them to the Administrator-General for the Presidency in which the Deceased was quartered.

Disposal of Surplus.

10. The Committee of Adjustment shall, according to the Circumstances of the Case, remit or lodge the Surplus aforesaid, to or in the Hands of such Paymaster or other Officer or Person, at such Time or Times, in such Manner, and together with such Accounts, Vouchers, Reports, and Information, as may be prescribed by Royal Warrant.

11. Where the Death occurs elsewhere than in *India*, or the Death occurs in *India*, the Deceased being (in the latter Case) a Soldier of Her Majesty's Army, then the Paymaster or other Officer or Person aforesaid shall dispose of the Surplus as follows :—

(1.) Where the amount exceeds One Hundred Pounds, he shall pay it over to the Representative of the Deceased, if present at Head-Quarters; and if there is none, shall forthwith remit it to the Secretary of State for War:

(2.) Where the Amount does not exceed One Hundred Pounds, it shall not be necessary for any Purpose that



Representation to the Deceased be taken out; but if Representation is taken out, such Paymaster or other Officer or Person shall pay the Amount over to the Representative, if present at Head-Quarters :

- (3.) Where the Amount does not exceed One Hundred Pounds, and Representation is not taken out, then such Paymaster or other Officer or Person shall dispose of the Amount, or Part thereof, (in such Manner as may be prescribed by Royal Warrant for such Cases,) for the Benefit of the Widow and of the Children or other near Relatives (if any) of the Deceased, or of some of such Persons, being present at Head-Quarters ; and if there are no such Persons, or any Part of the Amount aforesaid is not so disposed of for their Benefit, he shall forthwith remit the whole Amount, or the Part thereof not so disposed of, (as the Case may be,) to the Secretary of State for War.

12. Where the Death occurs in *India*, the Deceased not being a Soldier of Her Majesty's Army, the following Provisions shall take effect :—

Provision where Death occurs in *India*, the Deceased not being a Soldier.

- (1.) The Paymaster or other Officer or Person aforesaid shall, as soon as may be after receiving the Surplus aforesaid, publish such Notice (stating the Amount of the Surplus and other Particulars respecting the Deceased and his Property) as may be prescribed by Royal Warrant, together with a Notice stating that all Claims by Creditors against the Property of the Deceased are to be lodged with such Paymaster or other Officer or Person, who shall retain the Surplus for Two Months after the first Publication of such Gazette Notice as aforesaid, and shall receive and record all Claims lodged with him accordingly :
- (2.) If Claims are so lodged, not exceeding in the whole such absolute Amount, or such Proportion of the Surplus, as may be prescribed by Royal Warrant, according to the Circumstances of different Cases, then such Paymaster or other Officer or Person shall, at the Expiration of the said Two Months, proceed to discharge the Demands of the

Claimants who have lodged Claims with him, unless, under the Special Circumstances of the Case of the Deceased, it appears to him inexpedient or unjust to do so :

(3.) In that Case, or in Case the Claims lodged exceed in the whole the absolute Amount or the Proportion aforesaid, then such Paymaster or other Officer or Person shall, without discharging those Claims, or any of them, transfer the Surplus aforesaid to the Administrator-General for the Presidency :

(4.) Where such Paymaster or other Officer or Person does not so transfer the Surplus, he shall dispose thereof, or of so much thereof as remains after the Discharge of any Claims, as follows :—

Where the Amount exceeds One Hundred Pounds, he shall pay it over to the Representative of the Deceased in *India*, if any ;

Where the Amount does not exceed One Hundred Pounds, it shall not be necessary for any Purpose that Representation to the Deceased be taken out in *India* ; but if Representation is taken out there, such Paymaster or other Officer or Person shall pay the Amount over to the Representative in *India* ;

Where the Amount does not exceed One Hundred Pounds, and Representation in *India* is not taken out, such Paymaster or other Officer or Person shall dispose of the Amount, or Part thereof, in *India*, (in such Manner as may be prescribed by Royal Warrant for such Cases,) for the Benefit of the Widow and of the Children or other near Relatives (if any) of the Deceased, or of some of such Persons, being in *India* ;

(5.) Subject to the foregoing Provisions, such Paymaster or other Officer or Person shall, at the Expiration of such Time, not exceeding in any Case Six Months, as may be prescribed by Royal Warrant, remit the Surplus, or so much thereof as remains in his Hands after discharging any Claims, from *India* to *England*, as follows :—

In the Cases of Officers of Her Majesty's Army



constituting the Staff Corps of the three Presidencies, and in the Cases of Officers and *European* Soldiers of Her Majesty's *Indian* Army, to the Secretary of State for *India* in Council—

In other Cases, to the Secretary of State for War.

Disposal of Residue by Secretary of State.

13. The Secretary of State for War, or the Secretary of State for *India* in Council, as the Case may be, on receiving any such Surplus or Part of a Surplus as is hereinbefore directed to be remitted, shall cause an Account to be made up, as soon as may be, of the total Amount to the Credit of the Deceased, including the Amount of the Surplus or Part of a Surplus so remitted, together with all Arrears of Pay, Batta, Grants, and other Allowances in the Nature thereof, and thereupon shall cause to be published, as soon as conveniently may be, in the *London Gazette*, and also in any Newspaper or otherwise as may seem fit, a Notice stating the Total Amount to the Credit of the Deceased as aforesaid, hereinafter called the Residue, and such other Particulars respecting the Deceased and his Property as may seem fit, together with a Notice stating the Mode in which any Application respecting the Residue is to be made to the Secretary of State for War, or to the Secretary of State for *India* in Council, as the Case may be.

14. Where the Residue exceeds One Hundred Pounds, the Secretary of State for War, or the Secretary of State for *India* in Council, as the Case may be, shall dispose of the Residue by paying it over to the Representative of the Deceased.

15. Where the Residue does not exceed One Hundred Pounds, it shall not be necessary for any Purpose that Representation to the Deceased be taken out; but in any case the Secretary of State for War, or the Secretary of State for *India* in Council, as the Case may be, may, if it seems fit, require Representation to be taken out; and if on that Requisition or otherwise, Representation is taken out, then he shall dispose of the Residue by paying it over to the Representative.

16. Where the Residue does not exceed One Hundred Pounds

Where Residue does not exceed £100 and no Representation, War or India Office empowered to pay it over for Benefit of Widow, &c., or to invest it for Benefit of Children, &c.

and Representation is not taken out, then, after the Expiration from the First Publication of the required Notice in the *London Gazette*, of Three Months in the Case of an Officer, and of One Month in the Case of a Soldier, the Secretary

of State for War, or the Secretary of State for *India* in Council, as the Case may be, shall dispose of the Residue as follows:—

- (1.) He shall, if he thinks fit, pay the Residue over to any Person showing herself or himself, to the Satisfaction of the Secretary of State for War, or the Secretary of State for *India* in Council, as the Case may be, to be the Widow of the Deceased, or to be the Child or any Relative of the Deceased, or to be entitled to take out Representation to the Deceased,—to the end that the Residue may be applied by the Person to whom it is so paid over in a due Course of Administration, and the same shall be so applied accordingly (for which Application the Secretary of State for War, or the Secretary of State for *India* in Council, as the Case may be, may require such Security as seems fit) :

- (2.) Or else, where the Deceased leaves any Child or near Relative him surviving, the Secretary of State for War, or the Secretary of State for *India* in Council, as the Case may be, shall retain the Residue in his Hands on behalf of such Child or near Relative, and shall invest the Residue, or any Part thereof, in such Manner as may be prescribed by Royal Warrant, and shall apply the Sums invested, and the Income thereof, or any Part thereof respectively, from Time to Time, for the Maintenance, Education, or Advancement, or otherwise for the Benefit of such Child or near Relative, in such Manner as may seem fit, subject to such Regulations as may be laid down by Royal Warrant.

Debts.

17. Notwithstanding anything hereinbefore contained, where the

Provision in last-mentioned Case for Payment of Debts out of Residue.

Residue does not exceed One Hundred Pounds, and Representation to the Deceased is not taken



out, the Secretary of State for War, or the Secretary of State for *India* in Council, as the Case may be, shall, before disposing of the Residue or any Part thereof, in Manner aforesaid,—or after so disposing of the Residue or any Part thereof, if and so far as the Disposition thereof is capable of Revocation,—apply the Residue, or so much as may be requisite, in or towards Payment of any Debt of the Deceased of which he has Notice, subject to the following Conditions:—

First,—That the Debt accrued due within Three Years before the Death :

Second,—That Payment of it is claimed within Two Years after the Death :

Third,—That the Claimant proves the Debt to the Satisfaction of the Secretary of State for War, or of the Secretary of State for *India* in Council, as the Case may be.

Any Person claiming to be a Creditor of the Deceased shall not be entitled to obtain Payment of his Debt out of any Money that may, under this Act, be in the Hands of the Secretary of State for War, or of the Secretary of State for *India* in Council, by any Means or Proceedings whatever, except by Means of a Claim lodged with such Secretary of State, and Proceedings thereon, under and according to this Act.

Nothing in the present Section shall prejudicially affect the Claim of any Creditor in respect of a Debt incurred before the Commencement of this Part of this Act.

Undisposed of Residues.

18. If in any Case the Residue or any Part thereof remains, for One Year after the First Publication of the required Notice in the *London Gazette*, in the Hands of the Secretary of State for War, or of the Secretary of State for *India* in Council, as the Case may be, undisposed of or unappropriated, then, as soon as conveniently may be after the End of that Year, the Secretary of State for War, or the Secretary of State for *India* in Council, as the Case may be, shall cause to be published in the *London Gazette* a Notice similar to the Original required Notice, *mutatis mutandis*, and so for Six successive Years from the Publication of the Original

Residues undisposed of for 6 Years to be applied towards Compassionate Fund.



Notice; and if in any Case the Residue, or any Part thereof, remains in the Hands of the Secretary of State for War, or the Secretary of State for *India* in Council, as the Case may be, undisposed of or unappropriated for Six Months after the Publication of the Last of such required Notices in the *London Gazette*, then, at the Expiration of the said Six Months, he shall apply the same, together with any Income or Accumulations of Income accrued therefrom, in such Manner in or towards the Creation or Maintenance of such Compassionate or other Fund for the Benefit of Widows and Children or other near Relatives of Soldiers dying on Service, as may be prescribed by Royal Warrant.

Provided, that the Application under the present Section of any Residue, or Part of a Residue, undisposed of or unappropriated as aforesaid, shall not be deemed to bar any Claim of any Person to the same, or any Part thereof, that may be established at any Time after such Application.

Medals and Decorations.

19. Medals and Decorations belonging to an Officer or Soldier dying on Service shall not be considered to be comprised in the Personal Estate of the Deceased with reference to the Claims of Creditors or for any of the Purposes of Administration under this Act or otherwise; and, notwithstanding anything in this or any other Act contained, the same, when secured by the Committee of Adjustment, shall be held and disposed of according to Regulations laid down by Royal Warrant.

Medals and Decorations excepted;
To be disposed of according to Royal Warrant.

Exception as to Regimental Paymasters.

20. The Case of a Regimental Paymaster dying on Service shall, notwithstanding anything hereinbefore contained, be provided for as follows :—

Special Provision for Case of Death of Regimental Paymaster.

- (1.) That Case shall be deemed wholly excepted out of the foregoing Provisions of this Act, save so far as they define and give Preference to and regulate the Payment of and provide for Decisions respecting Preferential Charges, and as they relate to the Duties and Powers of the Committee of Adjustment, and to Medals and Decorations:



- (2.) The Duties and Powers of the Committee of Adjustment in relation to the Property shall nevertheless, in the Case of a Regimental Paymaster, be deemed to arise in full, immediately and unconditionally on the Death, and to continue notwithstanding the payment of the Preferential Charges by any Person :
- (3.) Money in the Possession or under the Control of a Regimental Paymaster at his Death shall not be considered to be comprised in his Effects for the Purposes of this Act :
- (4.) The Surplus in the Hands of the Committee of Adjustment shall, in the Case of a Regimental Paymaster, be dealt with by them as may be prescribed by Royal Warrant, and not according to the foregoing Provisions of this Act.

Administrators-General and other Official Administrators.

21. An Administrator-General for a Presidency in India, or a Registrar of any Court in India or in any of Her Majesty's Colonies or Possessions abroad, or any other Official Administrator, notwithstanding any Law regulating his Office independently of this Act, shall not interpose in any Manner in relation to any Property of an Officer or Soldier dying on Service, except in the Cases expressly provided for in this Act, or unless expressly required to do so by a Committee of Adjustment, or some other Officers or Persons, acting under this Act.

Where, under this Act, any Property comes to the Hands of any such Administrator-General, Registrar, or other Official Administrator, he shall administer the same in accordance with the Provisions of this Act relating to Preferential Charges, and the other Provisions of this Act, and, subject thereto, according to the Law regulating his Office independently of this Act.

Where any Money coming, under this Act, to the Hands of any such Administrator-General, remains in his Hands after Discharge of all Debts and Liabilities, he shall remit the same to the Secretary of State for India in Council at such Time and in such Manner as he directs, to be retained or to be paid over to the Secretary of State for War, as the Case may require, and to be disposed of, according to the



Provisions of this Act, as the Residue or Part of the Residue of the Property of the Deceased.

An Administrator-General shall not be entitled to take, and it shall not be lawful for him to take, a Percentage on the Property of an Officer or Soldier dying on Service, exceeding Three *per Centum* on the gross Amount coming to his Hands if Preferential Charges have been previously paid, or on the gross Amount remaining in his Hands after Payment by him of Preferential Charges, as the Case may be.

Miscellaneous.

22. Any Property of an Officer or Soldier dying on Service, Money remitted not coming, under this Act, to the Hands of any to be Assets in Place where remitted to. Paymaster or other Officer or Person, shall not, by reason of so coming, be deemed Assets or Effects at the Place in which that Paymaster or other Officer or Person is stationed or resides, and it shall not be necessary by reason thereof that Representation should be taken out in respect of that Property for that Place.

Where, under this Act, any such Property is to be paid or delivered over to the Representative of a deceased Officer or Soldier or other Person entitled to receive the same,—

if such payment or delivery is to be made in *India*, then the Military Secretary to the Government of the Presidency in which the deceased was quartered,—

and if such Payment is to be made elsewhere than in *India*, then the Secretary of State for War, or the Secretary of State for *India* in Council, as the Case may be,—

may order that such Property be transmitted to any other Place where the same can be more conveniently paid or delivered over as aforesaid; and the Obedience to any such Order by any Paymaster or other Officer or Person in whose Hands such Property is, shall be a sufficient Discharge to him, and he shall not be liable in any Manner by reason of such Property having been in his Hands and having been transmitted under any such Order.

23. Nothing in this Act shall be deemed to prevent the Secretary of State for *India* in Council, on the Death of an Officer of Her Majesty's *Indian Army*, from Deduction of Arrears of Subscription to Military and Orphan Funds.



deducting in the Pay Office from any Arrear of Pay due to the Deceased the Amount of any Arrears of Subscription due by the Deceased to the Military and Orphan Funds, or either of them.

24. The Personal Estate of an Officer or Soldier dying on Service in *India*, not exceeding One Hundred Pounds, after Payment of Preferential Charges, and administered and disposed of under this Act without Representation being taken out, shall not be liable to the Payment of any Duty either in *India* or in the *United Kingdom*; but this Provision shall not affect any Exemption from Duty existing independently hereof.

25. A Creditor, as such, shall not be deemed a Person entitled to take out Representation to the Deceased within the Meaning of this Part of this Act; nor shall a Creditor taking out Representation, as such, be entitled, by virtue of such Representation, to claim from the Secretary of State for War, or the Secretary of State for *India* in Council, any Part of the Property of the Deceased.

26. Where any Original Will of an Officer or Soldier dying on Service comes to the Hands of the Secretary of State for War, or of the Secretary of State for *India* in Council, and Representation under the same is not taken out, then the Secretary of State for War, or the Secretary of State for *India* in Council, as the Case may be, may cause the same to be deposited as follows:—

Where the Domicile of the Testator was in *England* or in *India*, or in any of Her Majesty's Colonies or Possessions abroad, or in any Foreign Country, then in the Place for the time being appointed in *London* or *Middlesex* for the deposit of Original Wills brought into the Court of Probate.

Where the Domicile of the Testator was in *Ireland*, then in the place for the time being appointed in *Dublin* for the deposit of Original Wills brought into the Court of Probate.

Where the Domicile of the Testator was in *Scotland*, then in the Office of Commissary Clerk of the Commissary Court of the County of *Edinburgh*.

Where an Officer or Soldier dies on Service Intestate, and under this Act any Residue of his Property comes to the Hands of the



Secretary of State for War, or of the Secretary of State for *India* in Council, for Disposal, and Representation to the Deceased is not taken out, then the Secretary of State for War, or the Secretary of State for *India* in Council, as the Case may be, may, if it seems fit, cause a Declaration of the Intestacy of such Officer or Soldier to be deposited in the Place or Office where the Original Will of such Officer or Soldier (if any) would be deposited as aforesaid.

In every such Case the Secretary of State for War, or the Secretary of State for *India* in Council, as the Case may be, may cause to be deposited together with such Original Will or Declaration of Intestacy, an Inventory showing the Personal Property of the Deceased, and the Application thereof, as far as the same may be known.

Where the Original Will of any Officer or Soldier who has, before the Commencement of this Part of this Act, died on Service, is in the Hands of the Secretary of State for War, or of the Secretary of State for *India* in Council, he may, if it seems fit, at any Time cause the same to be deposited in the Place or Office where the Original Will of such Officer or Soldier would be deposited as aforesaid if he had died after the Commencement of this Part of this Act.

Every such Original Will, Declaration of Intestacy, and Inventory shall be preserved and dealt with, and may be inspected, subject and according to any general or other Rules or Orders for regulating such Preservation, Dealing, and Inspection, and for fixing any Fees to be payable in respect thereof, as may be from Time to Time made in that behalf by the Court, Judge, or other Authority empowered to make general or other Rules or Orders for like Purposes in relation to other Documents deposited in the same Place or Office.

PART II.—DESERTION AND OTHER CASES.

27. In every Case of Desertion, such Committee of Officers as may be prescribed by Royal Warrant, according to the Circumstances of different Cases, hereinafter called the Committee of Adjustment, shall immediately secure all such of the Deserter's Effects as—

On Desertion, Committee of Officers to sell Effects, and pay Expenses.

Where the Desertion occurs in the *United Kingdom*, are in Camp or Quarters;



Where the Desertion occurs out of the *United Kingdom*, are within the Station, Colony, or Command ;
and shall forthwith make an Inventory thereof, and shall, within Three Months after the Desertion, sell or convert into Money such Parts of the Deserter's Effects as do not consist of Money, and thereout pay the Expenses attending the Execution of the Provisions of the present Section.

28. The Surplus remaining after such Payment shall be liable to Application of Surplus. be applied in or towards Payment of any such Expenses and Debts incurred and owing by the Deserter as would, under Part I. of this Act, be Preferential Charges on his Personal Property in case he had died on Service, with the like Preference, in the like Order, and subject to the like Provisions for Decision of Doubt or Difference, as would in that Case apply, as nearly as may be, *mutatis mutandis*.

The Committee of Adjustment shall apply the same accordingly, and shall then dispose of any Property remaining in their Hands according to Regulations laid down by Royal Warrant.

29. For the Purposes of this Part of this Act, Absence without Leave for Twenty-one Days shall be deemed included in the term Desertion.

30. The Provisions of this Part of this Act shall apply, as nearly as may be, *mutatis mutandis*, in the Case of a Soldier delivered up as an Apprentice, or convicted of Felony.

Act to apply to Apprentices and Felons.

PART III.—INSANITY.

31. Where an Officer or Soldier is removed, put on Half Pay, or discharged, on the Ground of Insanity, such Committee of Officers as may be prescribed by Royal Warrant, according to the Circumstances of different Cases, hereinafter called the Committee of Adjustment, shall immediately secure all such of his Effects as—

In case of Insanity, Committee of Officers to secure Effects.

Where the Insanity occurs during Service in the *United Kingdom*, are in Camp or Quarters ; and

Where the Insanity occurs during Service out of the *United Kingdom*, are within the Station, Colony, or Command.



32. The Effects of such an Officer or Soldier shall be liable to be applied in or towards Payment of any such Expenses and Debts incurred and owing by him as would, under Part I. of this Act, be Preferential Charges on his Personal Property in Case he had died on Service, with the like Preference, in the like Order, and subject to the like Provisions for Decision of Doubt or Difference, as would in that Case apply, as nearly as may be, *mutatis mutandis*.

33. If any Person who would, if such Officer or Soldier were dead, be entitled to take out Representation to him (otherwise than as a Creditor), or his Wife (if any), or any near Relative, pays in full the Expenses and Debts aforesaid, the Committee of Adjustment shall not further interfere in relation to the Property.

If such Payment is not made, then, within One Month after the Removal, putting on Half Pay, or Discharge, is known at the Quarters where the Effects are, the Committee of Adjustment may and shall sell or convert into Money such Parts of the Effects as do not consist of Money, and, after paying thereout the Expenses attending the Discharge of their Duties, shall pay thereout the Expenses and Debts aforesaid, and shall dispose of any Property then remaining in their Hands as may be prescribed by Royal Warrant, to the end that the same may be applied for the Benefit of the Officer or Soldier to whom it belongs.

34. Where an Officer is put on Half Pay on the Ground of Insanity, the Secretary of the State for War, or the Secretary of State for India in Council, as the Case may be, may, if it seems fit, pay to the Person charged with the Care and Maintenance of such Officer all or any Part of his Half Pay, to be applied for his Care and Maintenance.

PART IV.—GENERAL PROVISIONS.

35. Every Payment or Application of Money, and every Sale or other Disposition of Property, made by the Secretary of State for War, or by the Secretary of State for India in Council, or by any

Validity of Payments, Sales, &c., under this Act.

Committee of Adjustment, or by any Paymaster or other Officer or Person, in pursuance of this Act, or of any Royal Warrant for carrying this Act into effect, shall be good and valid as against

all Persons whomsoever; and every such Secretary of State, and every Officer belonging to any

such Committee, and every such Paymaster,

Officer, or Person as aforesaid, shall be, by virtue of this Act, absolutely discharged from all Liability in respect of the Money or other Property so paid, applied, or disposed of.

36. Her Majesty may from Time to Time, by Warrant under the

Royal Sign Manual, do all such Things as are

Further Regulations
by Royal Warrant.

hereinbefore directed or authorized to be done

by Royal Warrant, and also prescribe such

Regulations as may seem fit, for the better Execution of any of the Purposes of this Act.

Every Royal Warrant made under this Act shall be laid before both Houses of Parliament within Fourteen Days after the making thereof, if Parliament is then sitting; and if not, then within Fourteen Days after the Commencement of the next Sitting of Parliament.

37. This Act shall, with respect to the making of any Royal

Warrant under it, take effect from its passing,

Commencement
of Act.

and in all other respects shall take effect from

the Time appointed for its Commencement in

the Royal Warrant first made under it.



(41)

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Title.	Extent of Repeal.
58 Geo. III., c. 73 ...	An Act for regulating the payment of regimental debts and the distribution of the effects of officers and soldiers dying on service, and the receipt of sums due to soldiers.	Sections 1, 2, and 3.
6 Geo. IV., c. 61 ...	An Act to amend two Acts, of the fifty-eighth year of His late Majesty, for regulating the payment of regimental debts and the distribution of the effects of officers and soldiers dying on service, and the receipt of sums due to soldiers; and of the fourth year of His present Majesty, for punishing mutiny and desertion of officers and soldiers in the service of the East India Company.	The whole.
11 Geo. IV., & 1 Will. IV., c. 41 ...	An Act to make further Regulations with respect to Army Pensioners.	Section 5, except as to Pension or Prize Money.
20 & 21 Vict., c. 66 ...	An Act for punishing mutiny and desertion of officers and soldiers in the service of the East India Company, and for regulating in such service the payment of regimental debts and the distribution of the effects of officers and soldiers dying in the service.	Sections 61 to 66, both inclusive.
26 & 27 Vict., c. 8 ...	An Act for punishing mutiny and desertion, and for the better payment of the army and their quarters.	Sections 98 to 102, both inclusive.



ROYAL WARRANT AND REGULATIONS UNDER THE REGIMENTAL DEBTS
ACT, 1863.

VICTORIA R.

Whereas it is by The Regimental Debts Act, 1863, enacted
26 & 27 Vict., c. 57. (among other things) that We may from time to
time, by Warrant under Our Royal Sign Manual,
do all such things as are in that Act directed or authorized to be done
by Royal Warrant, and also prescribe such Regulations as may seem
fit for the better execution of any of the purposes of the Act :

And whereas it is by the same Act further enacted that the Act
should, with respect to the making of any Royal Warrant under it,
take effect from its passing, and in all other respects should take effect
from the time appointed for its commencement in the Royal Warrant
first made under it ; and no such Warrant has heretofore been made :

Now, therefore, We do by this Warrant, under Our Royal Sign
Manual, in pursuance of the said Act, and by virtue and in exercise
of the powers thereby vested in Us, and of every other power enabling
Us in this behalf, declare it to be Our will and pleasure—

I. That this Our Royal Warrant and the Regulations hereunto
annexed, to be administered and interpreted by Our Secretary of State
for War and Our Secretary of State for *India* in Council (as the
case may require), shall, subject to and in conjunction with The
Regimental Debts Act, 1863, be the sole and standing authority on
the matters in these Our Royal Warrant and Regulations comprised.

II. That The Regimental Debts Act, 1863, and these Our
Royal Warrant and Regulations, shall commence and take effect on
the first day of March, 1865.

III. That where and so far as The Regimental Debts Act, 1863,
or these Our Royal Warrant and Regulations, do not particularly
prescribe the manner in which any sum of money is to be disposed
of or invested, then and in every such case, until by further Warrant
under Our Royal Sign Manual We otherwise direct, the same shall
be disposed of or invested as the same would have been disposed of or
invested if The Regimental Debts Act, 1863, had not been passed.

IV. That, until by further Warrant under Our Royal Sign
Manual We otherwise direct, medals and decorations belonging to an



Officer or Soldier dying on Service shall be disposed of as Our Secretary of State for War may, according to the circumstances of different cases, think fit.

Given at Our Court at St. James's, the 30th day of September, 1864, in the twenty-eighth year of Our reign.

By Her Majesty's command,

DE GREY AN. RIPON.

REGULATIONS.

Preliminary.

1. Terms used in these Regulations have the same meaning as they have when used in the Regimental Debts Act, 1863.

I.—DEATH.

(Section 7 of the Act.)

2. Where the deceased was an Officer employed on the Staff, the Committee of Adjustment is to consist of two Officers, to be appointed by the Officer commanding on the station, one of whom is to be, if practicable, a Field Officer.

3. Where the deceased was an Officer not employed on the Staff, the Committee of Adjustment is to consist of the Major of the Regiment or the Officer doing the Major's duty in his absence, and two other Officers of the Regiment not under the rank of Captain (unless Officers of that rank or of the Regiment cannot conveniently be had), to be appointed by the Commanding Officer of the Regiment or by the Officer commanding on the station.

4. Where the deceased was a Soldier, the Committee of Adjustment is to consist of the Officer commanding the troops or company to which the deceased belonged, and two other Officers of the Regiment to be appointed by the Commanding Officer.

(Section 8 of the Act.)

5. The Committee of Adjustment are in all cases, as soon as practicable after the death, to make an inventory of the property, and an account of the debts and credits, of the deceased.



6. The inventory and account are to be made in duplicate, on the forms supplied, and each of the duplicates is to be certified by the Committee of Adjustment.

One of the duplicates is to be dealt with as hereafter in these Regulations directed.

Where the death occurs in *India*, the second of the duplicates is to be sent to the Military Secretary to the Government of the Presidency in which the deceased was quartered, and is to be delivered by him to the Administrator-General for the Presidency in cases where § (3) of Section 12 of the Act applies, and is to accompany the remittance of the surplus in cases where § (5) of the same section applies.

Where the death occurs elsewhere than in *India*, the second of the duplicates is to be kept with the regimental or other proper records.

7. The effects secured are to be kept in a place of security until duly sold or otherwise disposed of.

8. The effects secured are to be disposed of at fair and open auction at the most favorable opportunity,—in the case of an Officer, in the presence of a member of the Committee of Adjustment; and in the case of a Soldier, in the presence of the Officer commanding the troop or company.

9. The practice of employing a Non-Commissioned Officer in selling by auction such of the effects of a deceased Officer or Soldier as are not otherwise disposed of, is to be adhered to only in cases in which it appears to be most advantageous for the estate of the deceased.

When much trouble and responsibility are thrown upon the man by his being so employed, a commission, payable out of the effects, at a rate varying from two to five per cent. on the amount of the produce of the sale, according to the greater or less degree of trouble and responsibility thereby caused, may be paid to him, and charged in the statement of the accounts of the deceased, the man's receipt for the amount being annexed thereto, together with the certificate of the Commanding Officer that his employment as auctioneer was most advantageous for the estate, and that the duties performed by him justify the remuneration charged.

10. Where the Committee of Adjustment withdraw from interference in relation to the property of the deceased in consequence of the representative of the deceased, or his widow, or some of his next-of-kin,



paying in full the Preferential Charges, the Committee are forthwith to forward, together with the inventory and account, a report of the facts and circumstances as follows :—

Where the death occurs elsewhere than in *India*, or the death occurs in *India*, the deceased being (in the latter case) a Soldier of Her Majesty's Army,—to the Secretary of State for War:

Where the death occurs in *India*, the deceased not being a Soldier of Her Majesty's Army,—to the Military Secretary to the Government of the Presidency in which the deceased was quartered.

(Section 9 of the Act).

11. The Committee of Adjustment (in *India*) are to deliver over the effects secured by them to the Administrator-General, only in case they apprehend that considerable difficulty or delay may arise in or about the collection or realization of the effects and credits of the deceased, in consequence of the character of any investment, or in consequence of it being requisite to institute some action or suit in relation to the property of the deceased, or in case there is some other peculiar circumstance connected with the property making it in the judgment of the Committee expedient to take that course.

12. Where the Committee of Adjustment deliver over effects to an Administrator-General, they are to do so as soon as practicable after they have determined to take that course.

13. Where the Committee of Adjustment deliver over effects to an Administrator-General, they are forthwith to forward, together with the inventory and account, a report of the facts and circumstances as follows :—

Where the deceased was a Soldier of Her Majesty's Army,—to the Secretary of State for War.

In other cases,—to the Military Secretary to the Government of the Presidency in which the deceased was quartered.

(Section 10 of the Act).

14. Where the deceased was an Officer employed on the Staff, and the death occurs elsewhere than in *India*, the Committee of Adjustment are to remit or lodge the surplus as follows :—

Where the death occurs in the *United Kingdom*, they are to remit the surplus to the Government for the Recruiting Service in London :



Where the death occurs at any station abroad (except in *India*), they are to lodge the surplus in the Commissariat chest, taking a receipt for the amount from the Officer in charge of the Commissariat chest, which receipt, together with the inventory and the account of debts and credits, they are to transmit to the Secretary of State for War, making at the same time a full report of their proceedings to the Officer commanding on the Station.

15. Where the deceased was an Officer not employed on the Staff, and the death occurs elsewhere than in *India*, the Committee of Adjustment are to lodge the surplus in the hands of the Regimental Paymaster, who is to credit the amount in the next Regimental Pay List.

16. Where the deceased was a Soldier of Her Majesty's Army, then, whether the death occurs in *India* or elsewhere, the Committee of Adjustment are to lodge the surplus in the hands of the Regimental Paymaster, who is to credit the amount in the next Regimental Pay List or Casualty Return.

17. Where the death occurs in *India*, the deceased not being a Soldier of Her Majesty's Army, the Committee of Adjustment are to remit the surplus to the Military Secretary to the Government of the Presidency in which the deceased was quartered.

18. Whenever a Committee of Adjustment remit or lodge a surplus, they are to send or lodge therewith one of the duplicates of the inventory and of the account.

19. In the case of a Soldier of Her Majesty's Army, the Officer present at the sale is to furnish the Paymaster with a certified statement of the particulars thereof, on the printed forms supplied, and is to cause the amount of the produce to be carried to the credit of the man's account in the ledger.

In other cases, where the death occurs in *India*, the Officer present at the sale is to furnish the Military Secretary to the Government of the Presidency in which the deceased was quartered, with a certified statement of the particulars of the sale.

20. The Paymaster is to ascertain that all the articles reported in the inventory furnished to him as forthcoming are accounted for in the particulars of the sale, and is to annex the inventory and account, and the particulars of the sale, to the next Regimental Pay List or Casualty



Return of the period in which the sale is effected, and is to state therein the balance, debtor or creditor.

The Military Secretary is to have the inventory and account, and the statement of the particulars of the sale, compared and examined.

21. In Regiments of Her Majesty's Army stationed elsewhere than in *India*, quarterly Casualty Returns are to be made up according to the prescribed form in the Pay List.

22. Where a Regiment of Her Majesty's Army is stationed in *India*, monthly Casualty Returns, made up according to the printed form, are to be transmitted to the Secretary of State for War, and sums therein mentioned are to be stated in sterling money.

With respect to Her Majesty's *Indian* Army, like returns are to be transmitted to the Secretary of State for *India* in Council.

23. Casualty Returns from *India* are to specify in each case whether the deceased was known to be possessed of property of any description whatever besides that stated in the Casualty Return, but not actually realized when the return is made.

If any such other property is known, a statement of the particulars thereof, made out in duplicate, is to be forwarded with the Casualty Return, and a memorandum is to be annexed thereto of the steps that have been taken for recovering or realizing the same under the Act.

If no such other property is known, a memorandum to that effect is to be made on the Casualty Return.

24. Where a deceased Officer or Soldier leaves a Will, then, if representation is not taken out the original Will, and if representation is taken out, a complete and authenticated copy of the Will, is to be sent along with the inventory account and other papers by the Committee of Adjustment, and is to be transmitted to the Secretary of State for War or the Secretary of State for *India* in Council, as the case may require.

Where the original Will is sent, a complete and authenticated copy of it is to be first made under the direction of the Committee of Adjustment, and is to be kept with the regimental or other proper records.



(Section 12 of the Act, § (1.)

25. The notice under Section 12 of the Act, § (1) is to be published by advertisement in the Government Gazette of the Presidency in which the deceased was quartered.

26. The notice is to be in the following form, with such variations as circumstances require :—

THE REGIMENTAL DEBTS ACT, 1863, SECTION 12 § (1).

Notice is hereby given—

First.—That information has been received by me of the deaths of the Officers, Non-Commissioned Officers, and Soldiers named and described in the subjoined table.

Secondly.—That there have been received by me, as the surplus of their respective properties, the amounts set opposite their respective names in the same table.

Thirdly.—That all claims by creditors against the respective properties of the deceased are to be lodged with me within two calendar months from the date of this notice.

(Signed)

A. B.,

Military Secretary.

Calcutta, the

day of

(The Table above referred to.)

[illegible]



(Section 12 of the Act, § (2).

27. The power of the Military Secretary to discharge demands of such claimants as lodge claims with him is to arise in the following cases :—

- (1.) If the surplus does not exceed 1,000 rupees, and the claims lodged do not exceed in the whole 10 per cent. on the amount of the surplus.
- (2.) If the surplus exceeds 1,000 rupees, and the claims lodged do not exceed in the whole the sum of 100 rupees.

(Section 12 of the Act, § (5).

28. The Military Secretary is to make the prescribed remittance, under Section 12 of the Act § (5), within six calendar months after the first publication of the notice prescribed by § (1) of that section.

(Section 13 of the Act).

29. The notice under Section 13 of the Act is to be in the following form, with such variations as circumstances require :—

THE REGIMENTAL DEBTS ACT, 1863, SECTION 13.

Notice is hereby given—

First.—That information has been received at this Office of the deaths of the Officers, Non-Commissioned Officers, and Soldiers named and described in the subjoined Table.

Secondly.—That there are now standing to their respective credits in the books of this Office, as the residues of their respective properties, the amounts set opposite their respective names in the same Table, which amounts comprise the sums received as the surplus of their respective properties, and all arrears of pay, batta, grants, and other allowances whatever.

Thirdly.—That any application respecting the said respective residues is to be made to the Secretary of State by letter addressed to the Under-Secretary of State at this Office.

By order of the Secretary of State for War [*or for India in Council.*]

(Signed) A.B.

War Office, Pall Mall, London, S.W.,

[or, India Office, London, S.W.]

The

day of

(50)

(The Table previously referred to.)

Number.	Christian Name and surname in full of Officer, Non-Commissioned Officer, or Soldier deceased.	Branch of Service to which deceased belonged.	Number of Regiment.	Rank of Deceased.	Place of Death.	Date of Death.	Amount of Residue.	Whether Deceased known to have left a Will or not.	Other particulars respecting Deceased and his Property; and Remarks.	Number.
1										1
2										2
3										3
4										4

(Section 20 of the Act.)

30. In the case of a Regimental Paymaster, the Committee of Adjustment is to consist of the Commanding Officer, the Quartermaster, and the senior Captain (present at head-quarters) of the Regiment.

The Committee of Adjustment are forthwith to remit the surplus to the Secretary of State for War.

II.—DESERTION, APPRENTICESHIP, AND FELONY.

(Part II. of the Act.)

31. In all cases of desertion, and of a Soldier being delivered up as an apprentice, or convicted of felony by the civil power, the Committee of Adjustment is to be composed in like manner as in the respective cases of death.

32. The foregoing regulations relative to the respective cases of death are to be applied in cases of desertion, apprenticeship, and felony, as far as the difference of the circumstances will admit; but the Committee of Adjustment are forthwith to remit or lodge the money remaining in their hands, to or in the hands of the Regimental Paymaster, Military Secretary, or other Officer or person to whom or in whose hands they are to remit or lodge the surplus in the respective cases of death; and he is forthwith to transmit the same to the



Secretary of State for War or the Secretary of State for *India* in Council, as the case may require.

The same is to be then with all convenient speed applied as follows :—

In case of desertion, in the manner in which, if the same were an undisposed of residue, it would for the time being be applicable under Section 18 of the Act, at the expiration of such period of six months as in that section mentioned :

In other cases, in such manner as the Secretary of State for War or Secretary of State for *India* in Council (as the case may be) in his discretion thinks fit.

III.—INSANITY.

(Part III. of the Act.)

33. In cases of insanity, the Committee of Adjustment is to be composed in like manner as in the respective cases of death.

34. The foregoing regulations relative to the respective cases of death are to be applied in a case of insanity, as far as the difference of the circumstances will admit ; but the Committee of Adjustment are forthwith to remit or lodge the money remaining in their hands, to or in the hands of the Regimental Paymaster, Military Secretary, or other Officer or person to whom or in whose hands they are to remit or lodge the surplus in the respective cases of death ; and he is forthwith to transmit the same to the Secretary of State for War or the Secretary of State for *India* in Council, as the case may require.

The same is to be then with all convenient speed applied for the benefit of the Officer or Soldier to whom it belongs, in such manner as the Secretary of State for War or the Secretary of State for *India* in Council (as the case may be) in his discretion thinks fit.

GENERAL ORDER BY HIS EXCELLENCY THE GOVERNOR-GENERAL OF
INDIA IN COUNCIL.

Fort William, 2nd February, 1865.

No. 116 of 1865.—In publishing for general information the following despatch from the Right Hon'ble the Secretary of State, No. 41, dated 23rd November, 1863, His Excellency the Governor-



General in Council is pleased to announce that the Royal Warrant and Regulations No. $\frac{12759}{83}$,* dated 30th September, 1864, issued in

* War Office Circular No. 875. pursuance of the "Regimental Debts Act, 1863," will come into operation in *India* on the 1st March, 1865, from and after which latter date all previous Regulations repugnant to the provisions of the said Act and Warrant will cease to have effect.

2. Copies of the Act and Warrant will be issued to Corps and Departments.

LEGISLATIVE.

INDIA OFFICE,

No. 41.

London, 23rd November, 1864.

To His Excellency the Right Hon'ble the Governor-General of India in Council.

With reference to the concluding paragraph of my Despatch No. 29, dated 23rd September last, I herewith transmit to you a copy of the Regimental Debts Act, 1863, and three copies of the Royal Warrant which has been issued under it. As you have been already informed, the Warrant should be promulgated after the Mutiny Act of 1864 shall have come into force, in order to avoid any difficulty which might arise from supersession of the regulations laid down in the Warrant by those provisions of the Mutiny Act which relate to the same subject, and which it is intended by the Warrant to repeal. The Warrant when promulgated will, with the Regimental Debts Act, be the sole and standing authority on the matters comprised in them, and care will be taken to exclude from the Annual Mutiny Act, in future, any provisions bearing on the subject of the administration of the estates of deceased Officers and Soldiers.

2. In regard to the mode of proceeding on the death of an Officer or Soldier leaving effects, the Regimental Debts Act and the Royal Warrant contain the necessary instructions. In all cases a Committee of Adjustment will be appointed, who, in the case of a Soldier of Her Majesty's Army, as defined in Section 2 of the Act, will proceed, in disposing of the surplus of the personal estate of the deceased, in the manner prescribed by Section 11 of the Act, and Clause 16 of the Warrant; and in all other cases whatsoever (including the estates of Commissioned Officers of Her Majesty's Army, of Commissioned



Officers who constitute the Staff Corps of the three Presidencies, and of Warrant and Non-Commissioned Officers and Soldiers who have preferred the conditions of local service) will proceed as directed in Section 12 of the Act and Clause 17 of the Warrant, by which last-mentioned provision the Military Secretary to the Government of the Presidency in which the deceased was quartered is declared to be the "Officer" to whom, under Section 10 of the Act, the surplus is to be remitted, or with whom it is to be lodged.

3. Section 9 of the Act authorizes the Committee of Adjustment, in certain cases, to deliver over the effects received by them to the Administrator-General for the Presidency in which the deceased was quartered. What those circumstances are, are indicated in Clause 11 of the Warrant. The course is one to which Committees of Adjustment in all probability will not find it necessary frequently to resort.

4. The course to be followed by the Military Secretary on receipt of the personal estate of the deceased, is pointed out in Section 12 of the Act, and Clauses 25, 26, 27, and 28 of the Warrant.

5. The payment of arrears to the Military and Orphan Funds is provided for by Section 23 of the Act.

6. The only other provision of the Act to which I consider it necessary to call your attention is that part of Section 21 which fixes the maximum percentage to be taken by the Administrator-General at three per cent. With reference to this enactment, you will probably consider it expedient formally to declare, by an Act of the Legislature, that Section 26 of the *Indian Act VIII. of 1855* shall not be applicable to the estates of deceased Officers and Soldiers delivered over to the Administrator-General by the Military Secretary, or by a Committee of Adjustment.—I have, &c., C. WOOD.

H. W. NORMAN, *Colonel,*
Secy. to the Govt. of India.

By Notification No. 500 of 1870, Military Department, Government of *India*, it is notified that on the death of a Soldier (whether Warrant Officer, Non-Commissioned Officer, or Private, &c.), on the Unattached List, or attached to a Department or Office, a Committee of



Adjustment will assemble to secure his effects, and will proceed in the manner prescribed in the Royal Warrant and Regulations under the Regimental Debts Act, 1863.

The Committee of Adjustment are, as soon as practicable, to send one of the duplicates of the inventory and of the accounts, and to remit the surplus—

To the Officer Commanding the Sappers and Miners,—in the case of Soldiers borne on the Rolls of the Company of Royal Engineers attached to that corps.

To the Officer Commanding the Battery of Royal Artillery,—in the case of Soldiers borne on the Rolls of a Battery of Royal Artillery.

To the Regimental Paymaster,—in the case of Soldiers borne on the rolls of a Regiment.

To the Military Secretary to Government,—in the case of *European* soldiers of Her Majesty's *Indian* Army.

The surplus is to be disposed of by the Commanding Officer or Paymaster in the manner prescribed in the Regimental Debts Act, 1863, the inventory and accounts being annexed to, and any balance remitted in, the next Monthly Casualty Return to the Secretary of State for War.

The surplus of estates of Soldiers of Her Majesty's *Indian* Army will be disposed of by the Military Secretary to Government, the inventory and accounts being annexed to, and any balance remitted to the Secretary of State for *India* in, a Monthly Casualty Return.



ACT No. XXIV. of 1867.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor-General on the 22nd March, 1867.)**An Act to consolidate and amend the law relating to the office and duties of Administrator-General.*

Whereas it is expedient to consolidate and amend the law relating to the office and duties of Administrator-General ;
Preamble. It is hereby enacted as follows :—

PART I.

PRELIMINARY.

I. This Act may be called “The Administrator-General’s Act, 1867.”
Short title.

II. The Acts and parts of Acts specified in the schedule hereto are repealed, except so far as they repeal other Acts or Regulations, or parts of Acts or Regulations. All things duly done under any of the said Acts or parts of Acts hereby repealed shall be considered as having been done under this Act. Act No. XXVII of 1860 (*for facilitating the collection of debts on successions and for the security of parties paying debts to the representatives of deceased persons*) is repealed, except as to Hindús, Muhammadans and Buddhists, and persons exempted under the Indian Succession Act, 1865, Section 332, from the operation of such Act.
Repeal of Acts.

III. In this Act—unless there be something repugnant in the subject or context—
Interpretation clause.

“Presidency of Bengal” includes the territories which are or shall for the time being be respectively under the Governments of the Lieutenant-Governors of Bengal, the North-Western Provinces, and the Punjab, and under the administrations of the Chief Commissioners of Oudh, the Central Provinces, and British Burmah :

“Presidency of Madras” includes the territories which are or shall for the time being be under the Government of the Governor of Fort St. George in Council,
“Presidency of Madras.”

Coorg, and also, so far as regards British subjects, Mysore, and the Hyderabad Assigned Districts :

By Act XIX. of 1869, Section 1, the words "the Hyderabad Assigned Districts" are omitted from this clause.

"Presidency of Bombay" means the territories which are or shall for the time being be under the Government of
 "Presidency of Bombay." the Governor of Bombay in Council :

By Act XIX. of 1869, Section 1, the words "and also, so far as regards British subjects of the Hyderabad Assigned Districts," are added to this clause.

"Presidency Town." "Presidency Town" means the Town of Calcutta, Madras, or Bombay, as the case may be :

"Government" means the Governor-General of India in Council, so far as the Act relates to the Presidency of
 "Government." Bengal ; the person for the time being administering the executive government of the Presidency of Fort St. George, so far as the Act relates to the Presidency of Madras ; and the person for the time being administering the executive government of the Presidency of Bombay, so far as the Act relates to that Presidency.

"District Judge." "District Judge" means the Judge of a Principal Civil Court of Original Jurisdiction :

"Letters of administration" shall include any letters of administration, whether general or limited, or with a
 "Letters of Administration." Will annexed, and letters *ad colligenda bona* :

"Net-of-kin" includes a widower or widow of a deceased person, or any other person who, by law and according to
 "Next-of-kin." the practice of the Courts, would be entitled to

letters of administration in preference to a creditor or legatee of the deceased :

"Officer." "Officer" means a commissioned officer of Her Majesty's Army, or of Her Majesty's Indian Army :

"Soldier" means a soldier of Her Majesty's Army, or European soldier of Her Majesty's Indian Army, including
 "Soldier." a warrant and a non-commissioned officer :

"Assets." "Assets" includes immovable as well as movable property :

Gender. Number.

Words in the masculine gender include the feminine ; and words in the singular number include the plural, and *vice versa*.



PART II.

OF THE OFFICE OF ADMINISTRATOR-GENERAL.

IV. In each of the Presidencies of Bengal, Madras, and Bombay, there shall be an Administrator-General. The said Administrators-General shall be called respectively the Administrator-General of Bengal, the Administrator-General of Madras, and the Administrator-General of Bombay.

Designation of the Administrators-General in the three Presidencies.

Appointment, suspension, and removal of Administrators-General.

V. Such officers shall be appointed and may be suspended or removed by the authorities hereinafter mentioned respectively; that is to say :—

The Administrator-General of Bengal, by the Governor-General of India in Council; the Administrator-General of Madras, by the Government of Fort St. George; and the Administrator-General of Bombay, by the Government of Bombay.

VI. Any person hereafter appointed to the office of Administrator-General or officiating Administrator-General of any of the said Presidencies, shall be a member of the Bar of England, or Ireland, or of the Faculty of Advocates in Scotland; but any person now holding such office shall continue to hold the same, subject to the provisions contained in the other sections of this Act.

Qualification of future and continuance of existing incumbents.

Administrator-General not to be deemed an officer of High Court.

VII. The Administrator-General shall not be deemed in that capacity to be an officer of any High Court.

VIII. All probates and letters of administration granted by any of the late Supreme Courts of Judicature to the Ecclesiastical Registrar of such Court in virtue of his office, shall have the same effect in all respects as to any act hereafter to be done or required to be done under this Act, as if they had been granted to the Administrator-General.

Probates and letters of administration granted by Supreme Courts to Ecclesiastical Registrars to have same effects as if granted to the Administrator-General.

IX. No person now holding the office of Administrator-General, or hereafter to be appointed to such office in any of the said Presidencies, shall hold the office of Ecclesiastical Registrar; nor without the express sanction of Government, any other office together

No Administrator-General to be Ecclesiastical Registrar.



Administrator General
not to hold any other
office without sanction of
Government.

Proviso.

with that of Administrator-General. Provided that the Administrator-General of the Presidency may be appointed Official Trustee under Act No. XVII of 1864 (*to constitute an office of Official Trustee:*) Provided, also, that the Administrator-General of Bengal may hold the office of Receiver of the High Court of Judicature at Fort William.

X. It is hereby declared to be an offence punishable in manner provided by Section 168 of the Indian Penal Code, for any Administrator-General to trade or traffic for his own benefit, or for the benefit of any other person, unless so far as shall appear to him to be expedient for the due management of the estates which shall come into his charge under the provisions of this Act, and for the sole benefit of the several persons entitled to the proceeds of such estates respectively; but this exception is not to be constructed to alter the civil liabilities of the Administrator-General as trustee of such estates.

XI. Unless the Governor-General of India in Council, or the Government, with the sanction of the Governor-General of India in Council, shall otherwise order, every Administrator-General hereafter to be appointed shall give security to the Secretary of State for India for the due execution of his office, for one lakh of rupees by his own bond, and for another lakh of rupees, or for separate sums amounting together to one lakh of rupees, by the deposit of Government securities, or by the joint and several bond or bonds of two or more sureties to be approved by Government, or partly by such deposit and partly by such bond or bonds: Provided that every Administrator-General may, with the consent of Government, substitute either of the said two last-mentioned kinds of security for another previously given for such last-mentioned lakh or any part of it; and every Administrator-General may, with the consent of Government, and shall, from time to time, when required by Government so to do, cause fresh sureties to be substituted for any of those previously bound, so far as the security shall relate to the due execution of his office for the time then to come.

XII. No Administrator-General should be required by any Court

No security nor oath to be required by Court from Administrator-General.

to enter into any administration bond, or to give other security to the Court, on the grant of any letters of administration to him in virtue of his office. No Administrator-General shall be required to verify, otherwise than by his signature, any petition presented by him under the provisions of this Act, and if the facts stated in any such petition are not within the Administrator-General's own personal knowledge, the petition may be subscribed and verified by any person competent to make the verification. Whoever makes a statement in any such petition which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding.

XIII. Whenever any person holding the office of Administrator-General shall obtain leave of absence, it shall

Appointment of officiating Administrator-General.

be lawful for the Government to appoint some person to officiate as Administrator-General, and such person, while so officiating, shall be subject to the same conditions and be bound by the same responsibilities as the Administrator-General by any law now in force or that may hereafter be enacted, and he shall be deemed to be Administrator-General for the time being under this Act, and shall be liable to give security under Section 11 of this Act in like manner as if he had been appointed Administrator-General.

PART III.

OF THE RIGHTS, POWERS, AND DUTIES OF THE ADMINISTRATOR-GENERAL.

(a).—*Grants of letters of administration and probate to the Administrator-General.*

XIV. So far as regards the Administrator-General of any of

As regards Administrator-General, High Court at Presidency town to be deemed a Court of competent jurisdiction within meaning of Sections 187 and 190 of Indian Succession Act.

the Presidencies of Bengal, Madras, and Bombay, the High Court of Judicature at the Presidency town shall be deemed to be a Court of competent jurisdiction within the meaning of Sections 187 and 190 of the Indian Succession Act, 1865.

wheresoever within the Presidency the property to be comprised in the probate or letters of administration may be situate.

XV. Any letters of administration, or letters *ad colligenda bona*, which shall hereafter be granted by the High Court of Judicature at any Presidency town, shall be granted to the Administrator-General of the Presidency, unless they shall be granted to the next-of-kin of deceased. The Administrator-General of the Presidency shall be deemed to have a right to letters of administration in preference to that of any person, merely on the ground of his being a creditor, a legatee other than an universal legatee, or a friend of the deceased.

XVI. If any person, not being a Hindú, Muhammadan or Buddhist, or a person exempted under the Indian Succession Act, 1865, Section 332, from the operation of that Act, shall have died, whether within any of the said Presidencies or not, and whether before or after the passing of this Act, and shall have left assets exceeding at the date of the death or within one year thereafter the value of one thousand rupees within any of the said Presidencies, and no person shall, within one month after his death, have applied in such Presidency for probate of a Will, or for any letters of administration of his estate, the Administrator-General of the Presidency in which such assets shall be is hereby required, within a reasonable time after he shall have had notice of the death of such person, and of his having left such assets as aforesaid, to take such proceedings as may be necessary to obtain from the High Court of Judicature at the Presidency town, letters of administration to the effects of such person, either generally or with a Will annexed, as the case may require. Whenever the Administrator-General of the Presidency shall take proceedings under this section, it shall be sufficient if the petition required by Section 246 of the Indian Succession Act, 1865, shall state the time and place of the deceased's death to the best of the petitioner's knowledge or belief, that the deceased left some property within the Presidency as hereinbefore defined, and the amount or value of assets which are likely to come into the petitioner's hands.

XVII. Whenever any person, whether a Hindú, Muhammadan or Buddhist, or not, shall have died leaving

assets within the local limits of the ordinary original civil jurisdiction of the High Court may, on application, if assets are in danger, direct Administrator-General to apply for administration.

assets within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at the Presidency town, it shall be lawful for the Court, upon the application of any person interested in such assets, or in

the due administration thereof, either as a creditor, legatee, next-of-kin, or otherwise, or upon the application of a friend of any minor who may be so interested, or upon the application of the Administrator General, if the applicant shall satisfy the Court that danger is to be apprehended of the misappropriation, deterioration or waste of such assets unless letters of administration of the effects of such person are granted, to make an order, upon such terms as to indemnifying the Administrator-General against costs and other expenses as to the Court shall seem fit, directing the Administrator-General to apply for letters of administration of the effects of such person. Provided

Administration to effects of deceased Hindú, Muhammadans or Buddhists, not to be granted under this section, unless required to protect the assets.

that, in the case of an application being made under this section for letters of administration to the effects of a deceased Hindú, Muhammadan or Buddhist, or person exempted as aforesaid, the Court may refuse to grant letters of administration to any person, if it be satisfied that such grant is unnecessary for the protection of

Costs of unnecessary application.

the assets, and in such case the said Court shall make such order as to the costs of the application as it shall think just.

XVIII. Whenever any person, whether a Hindú, Muhammadan

or Buddhist or not, shall have died, whether before or after the passing of this Act, leaving assets within the local limits of the ordinary original civil jurisdiction of any of the said High Courts, and such Court shall be satisfied that danger is to be apprehended of misappropriation, deterioration or waste of such property, before it can be ascertained who may be legally entitled to the succession to such property, or whether Administrator-General is entitled to letters of administration to such deceased person, it shall be lawful for the Court to authorize and enjoin the Administrator-General to

or Buddhist or not, shall have died, whether before or after the passing of this Act, leaving assets within the local limits of the ordinary original civil jurisdiction of any of the said High Courts, and such Court shall be satisfied that danger is to be apprehended of misappropriation, deterioration or waste of such property,

before it can be ascertained who may be legally entitled to the succession to such property, or whether Administrator-General is entitled to letters of administration to such deceased person, it shall be lawful for the Court to authorize and enjoin the Administrator-General to

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collect and take possession of such property, and to hold or deposit or invest the same according to the orders and directions of the Court, and in default of any such orders or directions, according to the provisions of this Act so far as the same are applicable to such property ;

Rate of commission and the Administrator-General shall be entitled payable in such case. to a commission of one *per centum* upon the amount of all movable assets collected or received by him in pursuance of such order, and also to reimburse himself for all payments made by him in respect of the assets which a private administrator of such assets might lawfully have made ; and in case letters of administration of any such property shall be afterwards granted to the Administrator-General, the said commission of one *per centum* shall be deemed a part payment of the commission payable to the Administrator-General under the letters of administration. Any order of Court made under the provisions of this section, shall entitle the Administrator-General to collect and to take possession of such property, and, if necessary, to maintain a suit for the recovery thereof.

XIX. If in the course of proceedings to obtain letters of administration under the provisions of Section 16 or

Probate to be granted to executor appearing in the course of proceedings taken by Administrator-General to obtain administration.

Section 17 of this Act, any executor appointed by a Will of the deceased shall appear according to the practice of the Court and prove the Will and accept the office of executor, or if any

person shall appear according to such practice and make out his claim to letters of administration as next-of-kin of the deceased and shall give such security as shall be required of him by law or by the practice of the Court, the Court shall grant probate of the Will or letters of administration accordingly, and shall

Costs of proceedings taken by the Administrator-General to be paid out of the estate.

award to the Administrator-General his costs of the proceedings so taken by him, to be paid out of the estate as part of the testamentary or

intestate expenses thereof.

XX. If no person shall appear according to the practice of the Court, and entitle himself to probate of a

If no executor or next-of-kin appear or give necessary security, letters administration to be granted to Administrator-General.

Will, or to a grant of letters of administration as next-of-kin of the deceased, or if the person who shall entitle himself to a grant of administration shall neglect to give such security

as shall be required of him by law or according to the practice of the Court, the Court shall grant letters of administration to the Administrator-General.

XXI. The Administrator-General shall, when duly authorized or required so to do by the Military Secretary to Government, secure and distribute the assets of the estate and effects of any officer, soldier, or other person subject to any Articles of War, in all cases in which such estate and effects do not exceed on the whole five hundred rupees, charging the estate with a commission of three *per centum* only. It shall not be necessary for the Administrator-General to take out letters of administration in cases referred to in this section: but he shall have the same powers with regard to all such assets as he would have had if he had taken out such letters.

Administrator-General in certain cases to secure and distribute the estate and effects of soldiers.

Proviso.

Administrator-General not precluded from applying for letters of administration in any case within one month after death of deceased.

XXII. Nothing in this Act is intended to preclude the Administrator-General from applying to the Court for letters of Administration in any case, within the period of one month from the death of the deceased.

XXIII. If any letters of administration which shall be granted to the Administrator-General under the provisions of this Act, shall be revoked or recalled, the same shall, so far as regards the Administrator-General and all persons acting under his authority in pursuance thereof, be deemed to have been only voidable; except as to any act done by any such Administrator-General or other person as aforesaid, after notice of a will or of any other fact which would render such letters of administration void: Provided that no notice of a Will or of any other fact which would render any such letters of administration void shall affect the Administrator-General or any person acting under his authority in pursuance of such letters of administration, unless, within the period of one month from the time of giving such notice, proceedings be commenced to prove the Will, or to cause the letters of administration to be revoked, or unless such proceedings be prosecuted without unreasonable delay.

After revocation, letters of administration granted to a Administrator-General to be deemed as to him to have been voidable only.

Exception.

Proviso.

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XXIV. If any letters of administration which shall be granted

What payments made or acts done by Administrator-General prior to revocation of administration upon production of a Will, shall be deemed valid.

under this Act shall be revoked upon the production and proof of a Will, all payments made or acts done by or under the authority of the Administrator-General in pursuance of such letters of administration prior to the revocation thereof, which would have been valid under any letters of administration lawfully granted to him with such Will annexed, shall be deemed valid notwithstanding such revocation.

XXV. If an executor or next-of-kin of the deceased, who shall

In what cases Court may recall Administrator-General's administration and grant probate, &c., to executor or next-of-kin.

not have been personally served with a citation or had notice thereof in time to appear in pursuance thereof, shall establish to the satisfaction of the Court a claim to probate of a Will or to letters of administration in preference to the Administrator-

General, any letters of administration which shall be granted by virtue of this Act to the Administrator-General may be recalled and revoked, and probate may be granted to such executor, or letters of administration granted to such other person as aforesaid: Provided that no

Unless a Will is proved, application to revoke such administration must be made within six months and without needless delay.

letters of administration which shall be granted to the Administrator-General shall be revoked or recalled for the cause aforesaid, except in cases in which a Will or codicil of the deceased shall

be proved in the Presidency, unless the application for that purpose shall be made within six months after the grant to the Administrator-General, and the Court shall be satisfied that there has been no unreasonable delay in making the application, or in transmitting the authority under which the application shall be made.

XXVI. If any letters of administration which shall be granted

Cost of obtaining administration, commission, &c., may, on revocation, be ordered by Court to be paid to the Administrator-General out of the assets.

to the Administrator-General in pursuance of this Act shall be revoked, the Court may order the costs of obtaining such letters of administration, and the whole or any part of any commission which would otherwise have been payable under

this Act, together with the costs of the Administrator-General in any proceedings taken to obtain such revocation, to be paid to or retained by the Administrator-General out of any assets belonging to the estate



Provided that, in any such case, when the deceased has left a Will appointing an executor, and probate of the Will has been granted by any Court in the Presidency to such executor within three months after the death, or when the widow or next-of-kin has, within one month if resident within the Presidency, or within three months if resident beyond the Presidency, obtained from any such Court letters of administration to the estate and effects of the deceased, then and in either of such cases the Administrator-General shall (without prejudice to the provisions contained in Sections 17 and 18 of this Act) not be entitled to receive or retain any commission out of any assets belonging to such estate and situate within the jurisdiction of the Court by which probate or administration shall have been granted as last aforesaid.

XXVII. Whenever the Administrator-General shall declare a dividend among such creditors of the deceased as have proved their debts, and shall notify the payment of such dividend by advertisement in the official Gazette, no creditor of the deceased

Exclusion of creditors who have not proved, from assets with which a dividend is made.

who shall not previously to such declaration and advertisement have proved his debt, shall be entitled to participate as such in the assets wherewith such dividend shall be made. Any payment or delivery of

After one year from grant of administration, distribution of assets by Administrator-General to be allowed against all claims of which he had no notice.

assets to any legatee or to any person entitled in distribution, which shall be made by an Administrator-General after the expiration of one year from the grant of the letters of administration under which such payment or delivery shall be

made, shall be allowed to the Administrator-General as against all creditors and other claimants against the estate, of whose debts or claims he shall not have had notice before making such payment or delivery :

Person receiving payments liable to therefund.

Provided that nothing herein contained shall exempt the person to whom such payment or delivery shall be made, from any liability to refund to which he would otherwise be liable : And provided also, that no notice of any debt

What to be notice of debt or claim.

or claim shall affect the Administrator-General unless proceedings to enforce the debt or claim be commenced within one month after the giving of such notice, and be prosecuted without unreasonable delay.

XXVIII. All letters of administration which shall be granted to

Letters of administration to be granted to Administrator-General in virtue of his office.

Authority given by such letters.

any Administrator-General in virtue of his office shall be granted to him by his name of office, and all letters of administration heretofore granted to the Ecclesiastical Registrar or Administrator-General officially, or which shall be granted to any Administrator-General in virtue of his office, shall authorize the Administrator-General for the time being of the same Presidency to act as administrator of the estate to which such letters of administration shall relate.

XXIX. Every probate which shall be granted to any Adminis-

Grant of probate to Administrator-General named as executor by virtue of his office.

trator-General of a Will, wherein he shall be named as executor by virtue of his office, shall be granted to him by his name of office, and shall authorize the Administrator-General for the time being of the same Presidency to act as executor of the estate to which such probate shall relate.

XXX. It shall be lawful for any private executor or administrator,

Transfer by private executor or administrator of interest under probate or letters of administration.

with the previous consent of the Administrator-General of the Presidency in which the property comprised in the probate or letters of administration is situate, by an instrument in writing under his hand, bearing a stamp of ten rupees and notified in the local Gazette, to transfer all estates, effects, and interests vested in him by virtue of such probate or letters to the Administrator-General by his name of office; and thereupon the transferor shall be exempt from all liability as such executor or administrator, as the case may be, for any act or omission in respect of the said property after the date of the said transfer; and the Administrator-General for the time being shall have the rights and be subject to the liabilities which he would have had, and to which he would have been subject, if the probate or letters of administration, as the case may be, had been granted to him by his name of office at the date aforesaid. Nothing herein contained shall be taken to exempt such transferor from liability for acts and omissions in respect of the said property prior to the transfer.

XXXI. All estates, effects, and interests which at the time of the death, resignation or removal from office of any Administrator-General, shall be vested in him by virtue of such letters of administration, probates or transfers as aforesaid, shall, upon every such death, resignation or removal, cease to be vested in him, and shall vest in his successor in office immediately upon his appointment thereto. All books, papers, and documents kept by such Administrator-General by virtue of his office as such executor or transferee as aforesaid, shall be transferred to and vested in his successor in office.

Vesting of estates, &c., in successor of Administrator-General.

(b.)—Suits by and against the Administrator-General.

XXXII. All suits or other proceedings which shall be commenced by or against any Administrator-General in his representative character, may be brought by or against him by his name of office, and no suit or other proceedings already commenced, or which shall be commenced by or against any person as Administrator-General, either alone or jointly with any other person, shall abate by reason of the death, resignation or removal from office of any such Administrator-General, but the same may, by order of the Court, and upon such terms as to the service of notices or otherwise as the Court may direct, be continued by or against his successor immediately upon his appointment, in the same manner as if no such death, resignation or removal had occurred: Provided that nothing hereinbefore contained shall render any such successor personally liable for any costs incurred prior to the order for continuing the suit against him.

Administrator-General to sue and be sued in his representative capacity by his name of office.

Suit not to abate by death, &c.

Proviso as to costs.

XXXIII. If any suit shall be brought by a creditor against any Administrator-General in his representative character, the plaintiff shall be liable to pay the costs of the suit, and shall not be entitled to have the decree (if any) in such suit enforced, unless upon proof by affidavit or otherwise that not less than one calendar month previous to the institution of the suit he had applied in writing to the Administrator-General stating the amount and other particulars of the claim, and supporting the same by such

Creditors' suits against Administrator-General.

evidence as, under the circumstances of the case, the Administrator-General was reasonably entitled to require, and that the Administrator-General had refused or neglected to register the claim according to the practice of his office. If in any such suit judgment is pronounced in favour of the plaintiff, he shall, nevertheless, be only entitled to payment out of the assets of the deceased *pari passu* with the other creditors.

(c.)—*Grant of Certificates by the Administrator-General.*

XXXIV. Whenever any person, not being a Hindu, Muhammadan, or Buddhist, or exempted under the Indian Succession Act, 1865, Section 332, from the operation of that Act, shall have died, whether within any of the said Presidencies or not, whether before or after the passing of this Act, and whether testate or intestate, and shall have left movable assets within any of the said Presidencies, and the Administrator-General of such Presidency shall be satisfied that such assets do not exceed in the whole one thousand rupees in value, he may, after the lapse of one month from the death if he shall think fit, or before the lapse of the said month if he shall be requested so to do by writing under the hand of the executor or the widow or other person entitled to administer the effects of the deceased, grant to any person claiming otherwise than as a creditor to be entitled to a share of such effects, certificates under his hand entitling the claimant to receive the sums or securities for money therein severally mentioned, belonging to the effects of the deceased, to the value of any sum not exceeding in the whole one thousand rupees: Provided that no certificate shall be granted under this section where probate of the deceased's Will or letters of administration of his effects has or have been granted, or in respect of any sum of money deposited in a Government Savings' Bank.

No certificate to be granted where probate or administration taken out, or in respect of money in Government Savings' Bank.

XXXV. If in cases falling within Section 34 of this Act, no person claiming otherwise than as a creditor to be entitled to a share of the effects of the deceased shall, within three months, obtain a certificate from the Administrator-General under the same section, or letters of administration to the estate and effects of the deceased, the Administrator-General may

Grant of certificate to creditors.

administer the estate without letters of administration, in the same manner as if such letters of administration had been granted to him; and if he shall neglect or refuse to take upon himself the administration of the estate and effects, he shall, upon the application of a creditor, and upon being satisfied of his title, grant a certificate in the same manner as if such creditor were entitled to a share of the effects of the deceased; and such certificate shall have the same effect as a certificate granted under the provisions of the same section, and shall be subject to all the provisions of this Act which are applicable to such certificate: Provided that the Administrator-General may, before granting such certificate, if he think fit, require the creditor to give reasonable security for the due administration of the estate and effects of the deceased.

Proviso.

XXXVI. The Administrator-General shall not be bound to grant any such certificate, unless he shall be satisfied of the title of the claimant and of the value of the effects of the deceased, either by the oath or solemn affirmation of the claimant (which oath or affirmation the Administrator-General is hereby authorized to administer or take), or by such other evidence as he shall require.

Administrator-General not bound to grant certificate unless satisfied of claimant's title, &c.

XXXVII. A copy of any such certificate with a receipt annexed shall, when such copy and receipt are signed by the persons to whom the certificate has been granted, be a full discharge for payment or delivery to him of the money or security for money therein mentioned, to the person paying or delivering the same: but nothing in this Act shall preclude any executor or administrator of the deceased from recovering, from the person receiving the same, the amount remaining in his hands after deducting the amount of all debts or other demands lawfully paid or discharged by him in due course of administration. And any creditor or claimant against the estate of the deceased shall be at liberty to recover his debt or claim out of the assets received by such person and remaining in his hands unadministered, in the same manner and to the same extent as if such person had obtained letters of administration to the estate of the deceased.

Copy of certificate with receipt annexed, when signed by certificate-holder, to be a discharge.

Right of executor or administrator against certificate-holder.

Right of creditor against assets in hands of certificate-holder.

XXXVIII. The Administrator-General shall not be bound to take

Administrator-General not bound to take out administration on account of effects in respect of which he has granted certificate.

out letters of administration to the estate of any deceased person on account of the effects in respect of which he shall grant any such certificate, but he may do so if he shall discover any fraud or misrepresentation made to him, or that the value

of the estate exceeded one thousand rupees.

XXXIX. For every such certificate the Administrator-General

Fee for certificate.

shall be entitled to charge a fee calculated after the rate of three rupees in the hundred on the

amount mentioned in the certificate.

(d).—*Expenses of the Administrator-General's Establishment.*

XL. The Administrator-General shall defray all the expenses of

Administrator-General to defray expenses of establishment, and all other charges not expressly provided for.

the establishment necessary for his office, and all other charges to which the said office shall be subject, except those for which express provision is made by this Act.

(e).—*Accounts and Schedules.*

XLI. The Administrator-General of each of the said Presidencies

Administrator-General to keep a separate account for each estate, to be open to inspection on payment of fee.

shall enter into books to be kept by him for that purpose, separate and distinct accounts of each estate, and of all such sums of money, bonds, and other securities for money, goods, effects, and

things as shall come to his hands, or to the hands of any person employed by him or in trust for him under this Act; and likewise of all payments made by him on account of such estate, and of all debts due by or to the same, specifying the dates of such receipts and payments respectively. Such books shall be kept in the Administrator-General's office, and shall be open for the inspection of all such persons, practitioners in the said Courts and others, as may have occasion to inspect the same, at office hours, paying only such reasonable fee as hath been or shall be, from time to time, fixed by the Government and published in the official Gazette of the Presidency to which the same may relate.

**XLII. The Administrator-General of each of the said Presidencies**

Administrator-General
to furnish half-yearly
schedules.

shall twice in every year, that is to say, on or before the first day of April, and on or before the first day of October, or on such other days as the Government shall, by any rules or orders to be published as aforesaid, direct, exhibit, and deliver, in the High Court at Calcutta, Madras, or Bombay, as the case may be, a true schedule showing the gross amount of all sums of money received or paid by him on account of each estate in his charge, and the balances, during the period of six months ending severally on the thirty-first day of December and thirtieth day of June next before the day of delivering such schedule, and a true list of all bonds or other securities received on account of each of the said estates during the same period ; and also a true schedule of all administrations whereof the final balances shall have been paid over to the persons entitled to the same, during the same period, specifying the amount of such balances and the persons to whom paid.

Schedules to be filed
and published.

Such schedules shall be filed as records in such High Court, and shall, within fourteen days afterwards, be published in the official Gazette of the Presidency by the said Administrator-General ; and copies thereof, in triplicate, shall be delivered by such Administrator-General to the Government, and shall be sent by such Government to the Secretary of State for India, in order that such Secretary may, if he think fit so to do, order the same to be deposited at the India Office for public inspection, and may cause notices to be published in the *London Gazette* and other leading newspapers, that such schedules are open to inspection there, or may make such other orders respecting the same as he may think fit.

PART IV.**OF THE AUDIT OF THE ADMINISTRATOR-GENERAL'S ACCOUNTS.****XLIII. The Government shall, from time to time, appoint auditors**

Government to ap-
point auditors.

to examine the accounts of the Administrator-General at the times of the delivery of the said schedules, and also at any other time when the Government shall think fit.



XLIV. The auditors shall examine the schedules and accounts,

Auditors to examine
schedule and report to
Government.

and report to the Government whether they contain a full and true account of everything which ought to be inserted therein, and whether the

books which by this Act are, or which by any such general rules and orders as hereinafter mentioned shall be, directed to be kept by the Administrator-General, have been duly and regularly kept, and whether the assets and securities have been duly kept and invested and deposited in the manner prescribed by this Act, or which shall be prescribed by any such rules and orders to be made as aforesaid.

XLV. Every auditor shall have power to summon as well the Ad-

Auditors to have
power to summon wit-
nesses and to call for
books, &c.

ministrator-General as any other person whose presence he may think necessary, to attend him from time to time; and to examine the Administrator-General or other person if he shall think fit, on

oath or solemn affirmation to be by him administered; and to call for all books, papers, vouchers, and documents which shall appear to him to be necessary for the purposes of the said reference. If the Administrator-General or other person, when summoned, shall refuse, or, without reasonable cause, neglect to attend or to produce any book, paper, voucher, or document so required, or shall attend and refuse to be sworn or make a solemn affirmation, when by law an affirmation may be substituted for an oath, or shall refuse to be examined, the auditors shall certify such neglect or refusal in writing to the High Court at the Presidency town;

Penalty for non-atten-
dance.

and every person so refusing or neglecting shall thereupon be punishable in like manner as if such refusal or neglect had been in contempt of the said High Court.

XLVI. The costs and expenses of preparing and publishing the

Costs of preparing
schedules, &c., how to
be paid.

said schedules and copies thereof, and of every such reference and examination as aforesaid, shall be defrayed by all the estates to which such schedules or accounts shall relate. Such costs and expenses, and the portion thereof to be contributed by each of the said estates, shall be ascertained and settled by the auditors, subject to the approval of the Government, and shall be paid out of the said estates accordingly by the Administrator-General.

XLVII. If upon any such reference and examination the auditors

Auditors to report specially to Government, if accounts appear not correct.

shall see reason to believe that the said schedules do not contain a true and correct account of the matters therein contained, or which ought to be therein contained, or that the assets have not been

duly kept and invested or deposited in the manner directed by this Act, or which shall be directed by any such rules and orders as aforesaid, or that the Administrator-General has failed to comply with the provisions and directions of this Act or of any such rules and orders, they shall report accordingly to the Government.

XLVIII. The Government may refer every such report as last

Proceedings upon such report.

aforesaid to the consideration of the Advocate-General for the Presidency, who shall thereupon,

if he shall think fit, proceed summarily against the defaulter or his executor or administrator in the High Court in the Presidency town, by petition for an account, or to compel obedience to this Act or to such rules and orders as aforesaid, or otherwise as he may think fit, in respect of all or any of the estates then or formerly under the administration of such defaulter; and the said Advocate-General shall have power to exhibit interrogatories to the said Administrator-General, executor or administrator (hereinafter called the defendant), who shall be bound to answer the same as fully as if a commission had been issued under the provisions of the Code of Civil Procedure for his examination upon the said interrogatories. The Court shall have power upon any such petition to compel the attendance in Court of the defendant and any witnesses who may be thought necessary, and to examine them orally or otherwise as the said Court shall think fit, and to make and enforce such order or orders as the Court shall think just.

XLIX. The costs, including those of the Advocate-General and

Costs of reference, &c., how to be defrayed.

of the reference to him, if the same shall be directed by the Court to be paid, shall be defrayed

either by the defendant or out of the estates rateably as the said Court shall direct; and whenever any costs shall be recovered from the defendant, the same shall be repaid to the estates by which they shall have been in the first instance contributed, and the Court may, if it shall think fit, order the defendant to receive his costs out of the said estates.



PART V.

OF THE COMMISSION OF THE ADMINISTRATOR-GENERAL.

L. The Administrator-General of each of the said Presidencies

Commission to be received by Administrators-General. under any letters of administration which shall be granted to him in his official character, or under any probate which shall be granted to him of a Will wherein he shall be named as executor by virtue of his office ; or under any probates or letters of administration which are or shall be vested in him by Section 8 or Section 30 of this Act, shall be entitled to receive a commission at the following rates respectively, viz. :—

The Administrator-General of Bengal at the rate of three *per centum*, and the Administrators-General of Madras and Bombay respectively at the rate of five *per centum*, upon the amount or value of the assets which they shall respectively collect and distribute in due course of administration.

LI. The last preceding section shall not apply to cases in which

Section 50 not to apply to property of officers and soldiers dying on service, which shall come to hand of Administrator-General. the property of an officer or soldier dying on service shall come to the hands of the Administrator-General of any of the said Presidencies, under the ninth or the twelfth section of the Statute called “The Regimental Debts Act,

1863 ;” and such Administrator-General shall not be entitled to take, and it shall not be lawful for him to take, a percentage on any such

Administrator-General entitled to a commission of only 3 per cent. on gross amount of such property. property exceeding three *per centum* on the gross amount coming to his hands after the passing of the Administrator-General’s Act, 1865, if preferential charges as defined by the fourth section of the said statute have been previously paid, or on the gross amount remaining in his hands after payment by him of such charges, as the case may be)

LII. The Administrator-General shall be entitled to reimburse

What expenses, &c., commission is to cover. himself for any payments made by him in respect of any estate in his charge, which a private administrator of such estate might have lawfully made; but, save as aforesaid, the commission to which the Administrator-General of each of the said three Presidencies shall be entitled is intended to cover, not merely

the expense and trouble of collecting the assets, but also his trouble and responsibility in distributing them in due course of administration. It

How payable.

is, therefore, enacted that one-half of such commission shall be payable to and retained by such

Administrator-General upon the collection of the assets, and the other half thereof shall be payable to the Administrator-General, who shall distribute any assets in the due course of administration, and may be

Commission retained to be deemed a distribution.

retained by him upon such distribution. The amount of the commission lawfully retained by an

Administrator-General upon the distribution of assets, shall be deemed a distribution in the due course of administration within the meaning of this Act.

LIII. The Governor-General of India in Council may, from time

Commission of the Administrator-General of Bengal may be raised and again reduced.

to time, order the rate of commission hereinbefore authorized to be received by the Administrator-General of Bengal, to be raised to any rate not exceeding five *per centum* upon the amount or

value of the assets which he shall collect and distribute in due course of administration, and again to be reduced. The Governments of the Presi-

Commission of the Administrators-General of Madras and Bombay may be reduced and again raised.

dencies of Fort St. George and Bombay respectively may, with the sanction of the Governor-General of India in Council, from time to time, order the aforesaid rate of commission hereby

authorized to be received by the Administrators-General of Madras and Bombay respectively, to be reduced and again to be

Proviso.

raised: Provided that the commission so to be received shall not at any time exceed five *per centum* of the assets collected, and that no person now holding the office of Administrator-General of Bengal, Madras, or Bombay, shall, by any such order, be deprived of the right to receive and retain, for his own use, a commission at the rate of three *per centum* in respect of all assets collected and actually administered by him.

LIV. No person other than the Administrator-General acting

Commission or agency not to be charged by executor or administrator other than the Administrator-General.

officially shall receive or retain any commission or agency charges for anything done as executor or administrator under any probate or letters of administration, or letters *ad colligenda bona*, which

have been granted by the Supreme Court or High Court of Judicature

at Fort William in Bengal since the passing of Act No. VII. of 1849 (*for the appointment of an Administrator-General in Bengal*), or by either of the Supreme or High Courts of Judicature at Madras and Bombay since the passing of Act No. II. of 1850 (*to amend and extend to Madras and Bombay Act No. VII. of 1849*), or which have been or shall be granted by any Court of competent jurisdiction within the meaning of Sections 187 and 190 of the Indian Succession Act, 1865 ;

Bequest in favour of but this enactment shall not prevent any executor
 executors not affected. or other person from having the benefit of any
 legacy bequeathed to him in his character of executor, or by way of
 commission or otherwise.

PART VI.

MISCELLANEOUS.

LV. The Government shall have power, from time to time, to

Government may
 make and alter rules
 and orders consistent
 with this Act—

make and alter any general rules and orders
 consistent with the provisions of this Act, for
 the safe custody of the assets and securities

which shall come to the hands or possession of the Administrator-
 General, and for the remittance to the India

For custody of assets.
 For remittance of
 money.

Office of all sums of money which shall be pay-
 able or belong to persons resident in Europe,

or in other cases where such remittances shall be required, and generally

For guidance of Ad-
 ministrator-General.

for the guidance and government of the Adminis-
 trator-General in the discharge of his duties ; and

may by such rules and orders, amongst other things, direct what books,
 accounts, and statements, in addition to those mentioned in this Act,

shall be kept by the Administrator-General, and in what form the same
 shall be kept, and what entries the same shall contain, and where the

same shall be kept, and where and how the assets and securities belong-
 ing to the estates to be administered by such Administrator-General

shall be kept and invested or deposited pending the administration
 thereof, and how and at what rate or rates of exchange any remittances

Proviso as to rules
 now in force.

thereof shall be made. Unless any such rules
 shall be made and published, the rules now in



force in each of the said Presidencies, so far as the same are not inconsistent with this Act, shall be of the same force and effect as if the same had been made and published under this Act.

LVI. Such orders shall be published in the *Gazette of India*, the *Fort St. George Gazette*, or the *Bombay Government Gazette*, as the case may be, and it shall be the duty of the several Administrators-General to obey and fulfil the same, and the same shall be a full authority and indemnity for all persons acting in pursuance thereof.

Orders of the Court to have same effect, and to be executed in same manner, as a decree.

LVII. Any order which shall be made under this Act by any Court, shall have the same effect, and be executed in the same manner, as a decree.

LVIII. Whoever, having been sworn or having taken a solemn affirmation under this Act, shall, upon any examination authorized by this Act, make a statement which is false, and which he either knows or believes to be false, or does not know to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding.

LIX. All assets in the official charge of the Administrator-General of any of the said Presidencies, and which now appear or shall hereafter appear from the official books and accounts of the Ecclesiastical Registrar and of the Administrator-General of any of those Presidencies, or from the official books and accounts of any of those officers, to have been in official custody for a period of fifteen years or upwards without any claim thereto having been made and allowed, shall be transferred and paid to the Controller-General of Accounts or to the Accountant-General to the Government of Fort St. George or Bombay, as the case may be, and be carried to the account and credit of the Government of India for the general purposes of Government; and the receipt of the said Controller-General or Accountant-General, as the case may be, shall be a full indemnity and discharge to the said Administrator-General for any such transfer or payment: Provided that this Act shall not authorize the transfer or payment

Proviso.

of any such proceeds as aforesaid, pending any suit already instituted or which shall be hereafter instituted in respect thereof.

LX. If any claim shall be hereafter made to any part of the

Mode of proceeding by claimant to recover principal money so transferred. securities, monies, or proceeds which shall be carried to the account or credit of the Government of India under the provisions of this Act, and if such claim shall be established to the satisfaction of the Controller-General or the Accountant-General to the Government of Fort St. George or Bombay, as the case may be, the Government of India shall pay to the claimant the amount of the principal so carried to the credit and account of the said Government of India, or so much thereof as shall appear to be due to the claimant. If the claim shall not be established to the satisfaction of the said Controller-General or Accountant-General, as the case may be, the claimant may apply by petition to the High Court at the Presidency town against the Secretary of State for India, and after taking evidence either orally or on affidavit in a summary way, as the said Court shall think fit, the said Court shall make such order on the petition for the payment of such portion of the said principal sum as justice shall require, and such order shall be binding on all parties to the suit.

LXI. Whenever any person, other than a Hindu, Muhammadan,

District Judge in certain cases to take charge of property of deceased persons, and to report to Administrator-General. or Buddhist, or a person exempted under the Indian Succession Act, 1865, Section 332, from the operation of that Act, shall die leaving assets within the limits of the jurisdiction of a District Judge, it shall be the duty of the District Judge to report the circumstance without delay to the Administrator-General of the Presidency, retaining the property under his charge, or appointing an officer under the provisions of the Indian Succession Act, 1865, Section 239, to take and keep possession of the same until the Administrator-General shall have obtained letters of administration, or until some other person shall have obtained such letters or a certificate from the Administrator-General under the provisions of this Act, when the property shall be delivered over to the person obtaining such letters of administration or certificate, or, in the event of a Will being discovered, to the person who may obtain probate of the Will.



LXII. Nothing in this Act is intended to require the Administrator-General to take proceedings to obtain letters

Act not to require administration of estates of soldiers, unless Administrator-General authorized by Military Secretary or Committee of Adjustment.

of administration to the estate or effects of any officer or soldier or other person subject to any Articles of War, unless when the Administrator-General shall be duly authorized or required so to

do by the Military Secretary to the Government, or by a Committee of Adjustment, or other officers or persons acting under any law for the time being in force relating to the payment of regimental debts; nor is anything in this Act contained intended to interfere with or alter the provisions of any Act of Parliament for regulating the payment of regimental debts, and the distribution of the effects of officers and soldiers dying in the service of Her Majesty in India, or of any Articles of War.

LXIII. Nothing contained in the Indian Succession Act, 1865, or

Indian Succession Act and Indian Companies' Act not to affect Administrator-General.

the Indian Companies' Act, 1866, shall be taken to supersede or affect the rights, duties, and privileges of the Administrators-General and officiating

Administrators-General of Bengal, Madras, and Bombay, respectively.

LXIV. It shall be lawful for the Governor-General of India in

Power to appoint a Deputy Administrator-General for the North-Western Provinces, the Punjab, Oudh, and Central Provinces.

Council to appoint a Deputy Administrator-General for all or any of the territories which are or shall for the time being be respectively under the governments of the said Lieutenant-Governors of the North-Western Provinces and the Punjab, and

under the administrations of the Chief Commissioners of Oudh and the Central Provinces; and the provisions contained in this Act as to the Administrator-General of Bengal shall apply to any Deputy Administrator-General so appointed, save that in such case this Act shall be construed in the North-Western Provinces, Oudh, and the Central Provinces, as if the High Court of Judicature for the North-Western Provinces of the Presidency of Fort William in Bengal, and, in the Punjab, as if the Chief Court of the Punjab, were substituted for the High Court of Judicature at Fort William.



SCHEDULE.

NUMBER OF ACT.	TITLE OF ACT.	EXTENT OF REPEAL.
VIII of 1855 ...	An Act to amend the law relating to the office and duties of Administrator-General	The whole Act.
XXVI of 1855...	An Act to facilitate the payment of small deposits in Government Savings' Banks to the representatives of the deceased depositors.	Section 4.
XXVI of 1860...	An Act to amend Act VIII of 1855 (relating to the office and duties of Administrator-General.)	The whole Act.
IV of 1865 ...	An Act to exempt the estates of deceased officers and soldiers delivered over to the Administrator-General of Bengal, Madras, or Bombay, from the operation of the 26th Section of Act No. VIII of 1855.	The whole Act.
X of 1865 ...	The Indian Succession Act, 1865.	Section 330.
XXV of 1866 ...	An Act to transfer to the Government of India certain securities and monies deposited in the High Courts of Judicature at Fort William, Madras, and Bombay, and in the Supreme Court of the Straits Settlement, and the proceeds of certain estates in the charge of the Administrator-General of Bengal.	So much of the Act as relates to the Administrator-General of Bengal.

(23) E