

MADRAS RECORD OFFICE.

Government of Madras.

Industrial DEPARTMENT.

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No. 269.

FROM
A. J. ARBUTHNOT, Esq.,*Chief Secretary to the Government of Fort Saint George,*

TO

THE SECRETARY TO THE GOVERNMENT OF INDIA,
HOME DEPARTMENT.

SIR,

In acknowledging the receipt of Mr. Under Secretary Howell's letter of the 19th December last, No. 1566, enclosing copy of a Bill to consolidate and amend the law relating to the office and duties of Administrator General, I am directed to submit, for the consideration of His Excellency the Viceroy and Governor General in Council, the annexed copy of a letter from the Administrator General at Madras, suggesting certain alterations in the provisions of the Bill.

2. The Governor in Council concurs in the opinion of the Administrator General, that it is not advisable to require that the Administrator General shall be invariably a Barrister or Advocate of five years' standing as provided in Section 5 of the Bill. His Excellency in Council would leave the office open to Attorneys or Solicitors and would omit the requirement of a standing of five years. The suggestion made by the Administrator General, that the value of the assets for which certificates may be granted under Section 34 should be raised to Rupees 1000, appears to be judicious. The Madras Government have no other remarks to make on the Bill.

I have the honor to be,
Sir,

Your most obedient Servant,

Pr FORT SAINT GEORGE.
22nd February 1867.

Chief Secretary.

From the Administrator General, to the Chief Secretary to Government, Fort Saint George; dated Madras, 7th February 1867, No. 164.

I have the honor to acknowledge the receipt, on the 16th ultimo, of the letter from the Secretary to the Government of India, dated 19th December last, to your address, enclosing copy of a Bill "to consolidate and amend the law relating to the office and duties of Administrator General," and intimating that the Government of India will be glad to receive any remarks which I may wish to make on the subject.

2. The proposed Act is decidedly an improvement on the existing law, and I have but few suggestions or observations to make in amendment of it.

3. Section 6 provides that the office of Administrator General shall hereafter be held only by a Barrister or Advocate of five years' standing. Under this rule, it may happen that the services of a good practical and experienced man may be lost to the Crown and Public. No doubt it would be highly advantageous to restrict the appointment to members of the legal profession, but it seems to me that it may be thrown open also to gentlemen who have been admitted as Attorneys at Law and Solicitors of the superior Courts in England, as well in the High Court in this coun-

try. However, it be deemed expedient that none but a Barrister or Advocate shall hereafter hold the appointment, I would suggest that the words "of not less than five years' standing" be expunged; otherwise, the Government may find it difficult to procure the services of a competent Barrister of five years' standing, while there may be others better qualified of less standing available for the appointment. On this point, it is worthy of observation that a standing of five years is all that is required for a seat in the Bench of the High Court.

4. Section 12 provides that "no Administrator General shall be required to verify otherwise than by his signature any petition presented by him under the provisions of the Act." This Section might be improved by inserting the words, "or accounts" after *petition* and before *presented*. It seems to me that the signature of the Administrator General to any account presented by him to the Court, ought to be a sufficient verification of it; and if this was declared to be sufficient it would be a great saving of expense to estates.

5. Section 33 is susceptible of improvement. I would propose that the following proviso be introduced into the Section:—"Provided that every judgment obtained against the Administrator General shall only entitle the plaintiff to rank as a creditor upon the estate for the amount of such judgment, and to be paid *pro rata* with other creditors of the estate." At present there is a rush amongst creditors to obtain judgment against an estate, and this puts the estate to considerable expense. There is no mode of proceeding at present by which, when one creditor sues and obtains a decree, all the creditors of an estate can be made to come in and prove their claims in that one suit; I think it is very desirable, therefore, that the Administrator General should be empowered by law, when he is sued by one creditor to compel all the creditors to come before the Court, and establish their claim in that one suit.

6. Section 34 provides for the grant by the Administrator General of certificates to principal claimants in the estates of any person not being Hindoos, Mahomedans or Buddhists, whose assets do not exceed in the whole 500 Rupees in value in each case. If the granting of such certificates could be extended to estates, whose assets do not exceed Rupees 1000, it would save the expense of administering to petty estates, and would, no doubt, be a boon to the public.

7. Section 54.—The effect of this Section is intended to be the preventing of private individuals, as well as Banks and Houses of Agency, from charging Commission or Agency charges on estates to which they administer, either as Executors or Administrators, or as Agents, under Powers of Attorney granted them by Executors or next of kin, but the object, as far as Banks and Houses of Agency are concerned, has never been realized; for it is a well known fact, that such parties administer to all large and valuable estates, leaving only those that are insolvent to come to this department, and it is equally well known that they invariably charge a commission or per centage on the value of estates in their hands under the rule of the Chamber of Commerce for the management of such estates, and for furnishing security to the Court, the partners of the individual and ostensible Administrator giving security for him and charging him and the estate a commission for so doing. It is clear that the Administrator would not undertake these Trusts without some remuneration; and thus the law is continually evaded to the prejudice of the public Administrator General, whose interests it will be necessary for the Legislature to guard by more stringent legislation. I would suggest that, besides declaring that the Agent Administrator shall not make or pay any such charges, there

should be an express provision under which every evasion or breach of the law shall subject the party offending to certain prescribed penalties. I would also propose that all parties possessing property belonging to a deceased person, whose estate is in the charge of the public Officer, should be required to give notice to him of assets in their possession or under their control. At present the public Officer has to send round letters, making inquiries of every one whom he may cast about and think to be a possible holder of such assets. This entails an immense amount of correspondence, and it does not always happen that his letters of inquiry are responded to. It is as much for the interest of Government as for the Administrator General that this notice should be required, more especially in the cases of escheated or unclaimed estates which, under Section 59 of the new Act, are to be carried to the account and credit of Government after 15 years. There is nothing to prevent private persons and Agency Firms holding such property from writing off escheated and unclaimed estates in their own books to their own profit, and it will not be sufficient simply to require notice of such assets being given to the Administrator General, but it will be advisable to empower the Chief Secretary or other public functionary to call upon and compel private parties under penalty to give the required notice. If notice of assets required be given as suggested, the Administrator General will administer to estates and discover the next of kin, and if no next of kin are forthcoming, he will at once make over to Government the proceeds of all such estates as may have remained unclaimed or to which no heirs can be found for 15 years.

8. In addition to the above remarks, I would beg leave to draw the attention of the Government to the difficulty against which the public Officer has to contend on suing up-country debtors. It would be a great boon if such debtors could be sued in the High Court at Madras, or in the Small Cause Court at the Presidency. Sometimes an estate is insolvent and there are no available funds to its credit. There may, however, be outstandings, but without funds in hand the Administrator General is unable to sue up-country debtors. For the purpose of suing up-country, a Vakeel must be retained and a heavy institution fee in stamps, as well as other fees to a considerable amount, must be incurred, which are not incurred at the Presidency. I would here notice a recent case which I was unable to proceed. A Zemindar residing at Tanjore owes a large sum of money to the estate of one Michael O'Donoghue, repeated demands for payment have been made, but without success, and I am unable to sue him, because the estate has no funds to pay the Institution fee and the Vakeel's fee. The heavy institution fee on the plaint is necessary in the Mofussil, but not in the Presidency town. I applied to the widow to advance the requisite funds, but she is unable to do so. I made a similar application to the creditors who are interested in the estate, but without success. It would, doubtless, on the other hand, be a hardship to such debtors to require them to come to the Presidency town and defend suits brought against them there. I confess I feel great difficulty in making any suggestion which would meet the end desired without injury to the rights of debtors residing up-country, but if I may be allowed to make the suggestion the Government, in order to prevent up-country debtors on the one hand, being brought to the Presidency town, intestate estates in a state of insolvency being protected on the other, might allow the Administrator General to have the benefit of the service of the Government Pleader of the several Courts, and might, in cases where the estate was unable to bear the expense of the institution, &c., fee, allow such suits to be brought without payment of fees, in the first instance.

9. I have one more suggestion to offer. In the course of my tenure of office, I have received several applications to interpose and take charge of assets of deceased Hindus from some of the parties beneficially interested in such estate; I have been in many cases unable, however, to comply with such applications, because before the Court will grant administration in such cases they require to be satisfied that the application for administration is made with the consent of the next of kin, that is, of all the parties whom the Court would consider entitled to administer if they chose to apply. It is impossible to obtain this consent in all cases, for it is only when the deceased's representatives have a quarrel about the estate, that they or some of them ask for the interposition of the Administrator General, and very often they cannot agree even upon a single point in connection with the estate, and are consequently driven to a suit. If the new Act provided that the Administrator General should intervene in all cases of Native estates to which administration was not taken out within a certain time, and if one of the parties beneficially interested should request him to apply for administration, I think it would meet many cases in which great difficulty is at present experienced.

10. I return the copy of the Bill, as well as the letter of the Under Secretary to the Government of India above referred to.

THE ADMINISTRATOR GENERAL'S BILL.

ARRANGEMENT OF SECTIONS.

PART I.—Preliminary.

1. Short Title.
2. Repeal of Acts.
3. Interpretation Clause.

PART II.—Of the Office of Administrator General.

4. Designation of the Administrators General in the three Presidencies.
5. Appointment, suspension and removal of Administrators General.
6. Qualification of future and continuance of existing incumbents.
7. Administrator General not to be deemed an Officer of High Court.
8. Probates and Letters of Administration granted by Supreme Courts to Ecclesiastical Registrars to have same effect as if granted to the Administrators General.
9. No Administrator General to be Ecclesiastical Registrar.
Administrator General not to hold any other office without sanction of Government.
Proviso.
10. Penalty for trading.
Exception.
11. Security to be given by Administrator General.
Substitution of security of sureties.
12. No security nor oath to be required by Court from Administrator General.
13. Appointment of Officiating 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.
14. 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.
15. Administrator General entitled to letters of administration, unless granted to next-of-kin of deceased.
Administrator General entitled in preference to creditor, legatee or friend.
16. When administration of estates of persons other than Hindus, Muhammadans or Buddhists is to be by Administrator General.
17. Upon death of any person leaving assets within local limits, High Court may, on application if assets are in danger, direct Administrator General to apply for administration.
18. Upon death of any person leaving property within local limits, High Court may, if property is in danger, enjoin Administrator General to collect and hold the same until right of succession or administration is ascertained.
Rate of commission payable in such case.
19. Probate to be granted to executor appearing in the course of proceedings taken by Administrator General to obtain administration.
Costs of proceedings taken by the Administrator General to be paid out of the estate.

20. If no executor or next-of-kin appear or give necessary security, letters of administration to be granted to Administrator General.
Administration to effects of deceased Hindūs, Muhammadans or Buddhists, not to be granted under Section 17, unless required to protect the assets.
Costs of unnecessary application.
21. Administrator General in certain cases to secure and distribute the estate and effects of soldiers.
Proviso.
22. Administrator General not precluded from applying for letters of administration in any case within one month after death of deceased.
23. After revocation, letters of administration granted to Administrator General to be deemed as to him to have been voidable only.
Exception.
Proviso.
24. What payments made or acts done by Administrator General prior to revocation of administration upon production of a will, shall be deemed valid.
25. In what cases Court may recall Administrator General's administration and grant probate, &c., to executor or next-of-kin.
Unless a will is proved, application to revoke such administration must be made within six months and without needless delay.
26. Costs of obtaining administration, commission, &c., may, on revocation, be ordered by Court to be paid to the Administrator General out of the assets.
27. 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.
Person receiving payments liable to refund.
What to be notice of debt or claim.
28. Letters of administration to be granted to Administrator General in virtue of his office.
Authority given by such letters.
29. Grant of probate to Administrator General named as executor by virtue of his office.
30. Transfer by private executor or administrator of interest under probate or letters of administration.
31. Vesting of estates, &c., in successor of Administrator General.

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

32. 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.
33. Suits against Administrator General in Courts other than Presidency Town High Courts.

(c).—Grant of Certificates by Administrator General.

34. In what case Administrator General may grant certificate.
No certificate to be granted in respect of money in Government Savings Bank.
35. Grant of certificate to creditors.
Proviso.
36. Administrator General not bound to grant certificate, unless satisfied of claimant's title, &c.
37. Certificate with receipt annexed, to be a sufficient discharge.
Proviso.

38. Administrator General not bound to take out administration on account of effects, in respect of which he has granted a certificate.
39. Fee for certificate.

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

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

(e).—Accounts and Schedules.

41. Administrator General to keep a separate account for each estate, to be open to inspection on payment of fee.
42. Administrator General to furnish half-yearly schedules.
Schedules to be filed and published.

PART IV.—Of the Audit of the Administrator General's Accounts.

43. Government to appoint auditors.
44. Auditors to examine schedule, and report to Government.
45. Auditors to have power to summon witnesses and to call for books, &c.
Penalty for non-attendance.
46. Costs of preparing schedules, &c., how to be paid.
47. Auditors to report specially to Government, if accounts appear not correct.
48. Proceedings upon such report.
49. Costs of reference, &c., how to be defrayed.

PART V.—Of the Commission of the Administrator General.

50. Commission to be received by Administrators General.
51. Section 50 not to apply to property of officers and soldiers dying on service, which shall come to hands of Administrator General.
Administrator General only entitled to a commission of three per cent. on gross amount of such property.
52. What expenses, &c., commission is to cover.
How payable.
Commission retained to be deemed a distribution.
53. Commission of the Administrators General of Madras and Bombay may be reduced and again raised.
Proviso.
54. Commission or agency not to be charged by executor or administrator other than the Administrator General.
Bequest in favour of executors not affected.

PART VI.—Miscellaneous.

55. Government may make and alter rules and orders consistent with this Act—
For custody of assets.
For remittance of money.
For guidance of Administrator General.
Proviso as to rules now in force.
56. Publication of orders, &c.
57. Orders of the Court to have same effect, and to be executed in same manner as a decree.
58. Penalty for false evidence.

59. The proceeds of estates unclaimed for fifteen years to be transferred to Government.
Proviso.
60. Mode of proceeding by claimant to recover principal money so transferred.
61. District Judge in certain cases to take charge of property of deceased persons, and to report to Administrator General.
62. Act not to require administration of estates of soldiers, unless Administrator General authorized by Military Secretary.
63. Indian Succession Act and Indian Companies' Act not to affect Administrator General.
Schedule of Acts repealed.

A
BILL
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 re-
lating to the office and
duties of Administrator General; It is
hereby enacted as follows :—

PART I.—*Preliminary.*

1. This Act may be called "The Ad-
ministrator Generals'
Act, 1867."

Short Title.

2. The Acts and parts of Acts speci-
fied in the Schedule
hereto are repealed, ex-
cept so far as they repeal other Acts or
Regulations, or parts of Acts or Regula-
tions. All things duly done under any of
the Acts or parts of Acts hereby repealed,
shall be considered as having been done
under this Act.

3. In this Act, unless there be some-
thing repugnant in the
subject or context—

" Presidency of Bengal" includes the
territories 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 under the
government of the Gov-
ernment of Madras.

ernor of Fort St. George, and also, so far as regards British subjects, Mysore, Coorg and the Hyderabad Assigned Districts.

"Presidency of Bombay" means the territories under the government of the Governor of Bombay:

"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 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" 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 will annexed, and letters *ad colligenda bona*:

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

"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 a Warrant and a Non-Commissioned Officer.

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.

4. 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.

5. 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.

6. 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, of not less than five years' standing; 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.

7. The Administrator General shall

Administrator General not to be deemed an Officer of High Court. not be deemed in that capacity to be an Officer of any High Court.

8. All probates and letters of administration granted by

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

9. No person now holding the office

No Administrator General to be Ecclesiastical Registrar. 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

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

office, together with that of Administrator General: Provided that

Proviso. the Administrator General of the Presidency

may be appointed Official Trustee under Act No. XVII of 1864: Provided also, that nothing in this Act shall prevent the Administrator General of Bengal from holding the office of receiver of the High Court of Judicature at Fort William.

10. It is hereby declared to be an

Penalty for trading. 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

Exception.

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 construed to alter the civil liabilities of the Administrator General as trustee of such estates.

11. Unless the Governor General of

Security to be given by Administrator General.

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 Government of 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

Substitution of security or sureties.

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.

12. No Administrator General shall be required by any Court 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; and no Administrator General shall be required to verify, otherwise than by his signature, any petition presented by him under the provisions of this Act.

13. Whenever any person holding the office of Administrator General shall obtain leave of absence, it shall 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.
Grant of Letters of Administration
and Probate to the Administrator General.

14. So far as regards the Administrator General of any of the Presidencies of Bombay, Madras and Bengal, the High Court of Judicature at the Presidency Town shall be deemed to be a Court of competent jurisdiction within the meaning of Sections 1-7 and 19 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.

15. Any letters of administration, or letters *ad colligenda bonâ*, 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 the 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, residuary or other legatee, or friend of the deceased.

16. If any person, not being a Hindû, Muhammadan or Buddhist, 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 the value of five hundred Rupees within any of the said Presidencies, and no person shall, within one month after his death, have applied in India 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 216 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 of assets which are likely to come into the petitioner's hands.

17. Whenever any person, whether a Hindú, Muhammadan or Buddhist, or not, shall die leaving 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 of such assets unless letters of administration of the effects of such person are granted, to make an order, upon such terms as to costs as to the Court shall seem fit, directing the Administrator General to apply for letters of administration of the effects of such person.

18. Whenever any person, whether a Hindú, Muhammadan or Buddhist, or not, shall have died leaving moveable or immovable property 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 the misappropriation 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, 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; and the Administrator General shall be entitled to a commission of one *per centum* upon

the amount of all moveable 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

Rate of commission payable in such case.

entitle the Administrator General to collect and to take possession of such property, and, if necessary, to maintain a suit for the recovery thereof.

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

20. If no person shall appear according to the practice of the Court, and entitle himself to probate of a 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: Provided that, in

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

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

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

the case of an application being made under Section 17 of this Act for letters of administration to the effects of a deceased Hindú, Muhammadan or Buddhist, the Court

Administration to effects of deceased Hindús, Muhammadans or Buddhists, not to be granted under Section 17, unless required to protect the assets.

may refuse to grant letters of administration to any person if it be satisfied that such grant is unnecessary for the protection of the assets, and in such case the said

Costs of unnecessary application. Court shall make such order as to the costs of the application as it shall think just.

21. 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.

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

Proviso.

22. 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.

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

23. If any letters of administration

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

Exception.

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

Previous.

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, nor unless such proceedings be prosecuted without unreasonable delay.

24. If any letters of administration

When granted to Administrator General, 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

which shall be granted 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.

25. 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

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

to such other person as aforesaid: Provided that no 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 India, 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.

26. If any letters of administration

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

which shall be granted 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.

27. Any payment or delivery of assets

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.

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 refund. 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 or claim shall affect the Administrator General, unless proceedings to enforce the debt or claim

What to be notice of debt or claim. be commenced within one month after the giving of such notice, and be prosecuted without unreasonable delay.

28. All letters of administration

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

which shall be granted to 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.

29. Every probate which shall be

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

granted to any Administrator 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.

30. It shall be lawful for any private

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

executor or administrator, 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 any such transferor from liability for acts and omissions in respect of the said property prior to the transfer.

31. All estates, effects and interests

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

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 or as such executor or transferee as aforesaid, shall be transferred to and vested in his successor in office.

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

32. All suits or other proceedings

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

which shall be commenced by or against any Administrator General in his representa-

tive character, may be brought by or against him by his name of office, and no

Suit not to abate by death, &c.

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.

33. If any suit shall be brought against

Suits against Administrator General in Courts other than Presidency Town High Courts.

any Administrator General in his representative character in any Court other than the

High Court in the Presidency Town, 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 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.

(c).—Grant of Certificates by Administrator General.

34. Whenever any person, not being

In what case Administrator General may grant certificate.

a Hindú, Muhammadan or Buddhist, 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 moveable assets within any of the said Presidencies, and the Administrator General of such Presidency shall be satisfied that such effects do not exceed in the whole five hun-

dred 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 widow or other person entitled to administer the effects of the deceased, grant to any person claiming to be entitled to a principal 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

No certificate to be granted in respect of money in Government Savings' Bank. sum not exceeding in the whole five hundred Rupees: Provided that no certificate shall be granted under this Section where letters of administration of such effects have been granted, or in respect of any sum of money deposited in a Government Savings' Bank.

35. If in cases falling within Section

Grant of certificate to creditors.

34 of this Act, no person claiming to be entitled to a principal 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 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 principal 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

Proviso. 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.

36. The Administrator General shall

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

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, affidavit or solemn affirmation of the claimant (which oath, affidavit or affirmation the Administrator General is hereby authorized to administer or take), or by such other evidence as he shall require.

37. Any such certificate, with a re-

Certificate with receipt annexed, to be a sufficient discharge.

ceipt annexed under the hand of the person to whom the certificate shall be granted, shall 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

Proviso.

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.

38. The Administrator General shall not be bound to take 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 five hundred Rupees.

39. For every such certificate the Administrator General 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.*

40. The Administrator General shall defray all the expenses of 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.*

41. The Administrator General of each of the said Presidencies 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.

42. The Administrator General of each of the said Presidencies 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 open Court, 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. Such schedules shall be filed of record 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 Secretary of the said Presidency, and shall be sent by the Governor thereof 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.

43. The Government shall from time to time appoint 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.

44. The auditors shall examine the schedules and accounts, and report to the Government whether they contain a full and true account of every thing 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.

45. Every auditor shall have power to summon as well the Administrator 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; 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.

46. The costs and expenses of preparing and publishing the 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.

47. If upon any such reference and ex-

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

amination the auditors shall see reason to believe that the said schedules do not contain a true and correct ac-

count 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.

48. The Government may refer every

Proceedings upon such report.

such report as last 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.

49. 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.

50. The Administrator General of each

Commission to be received by Administrators General.

of the said Presidencies, 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.

51. The last preceding Section shall not apply to cases in

Section 50 not to apply to property of officers and soldiers dying on service, which shall come to hands of Administrator General.

which 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

Administrator General only entitled to a commission of three per cent on gross amount of such property.

any such property exceeding three *per centum* on the gross amount coming to his hands after the passing of the Adminis-

trator 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.

52. 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 is therefore enacted that one-half of such commission shall be payable

How 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 retained by him upon such distribution. The

Commission retained to be deemed a distribution.

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.

53. The Governments of the Presidencies of Fort St. George

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

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 raised: Provided that

Provido.

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 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.

54. 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 or shall be granted by the Supreme

Court or High Court of Judicature at Fort William in Bengal since the passing of Act No. VII of 1819, or by either of the Supreme or High Courts of Judicature at Madras and Bombay since the passing of Act No. II of 1850, or which shall hereafter be granted by either of the same High Courts; but this enactment

Request in favour of executors not affected. shall not prevent any executor 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.*

55. The Government shall have power

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

from time to time to make and alter any general rules and orders consistent with the provisions of this Act, for the safe custody

For custody of assets.
For remittance of money.

of the assets and securities which shall come to the hands or possession of the Administrator General, and for the remittance to the India Office of all sums of money which shall be payable or belong to persons resident in Europe, or in other cases where such remittances shall be required,

For guidance of Administrator General.

and generally for the guidance and government of the Administrator 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 thereof shall be made. Unless any

Proviso as to rules now in force.

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.

56. Such orders shall be published in the Official Gazette of

Publication of Orders, &c.

the several Presidencies, 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.

57. Any order which shall be made

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

under this Act by any Court shall have the same effect and be executed in the same manner as a decree.

58. Every person who, having been

Penalty for false evidence.

sworn or having taken a solemn affirmation under this Act, shall

wilfully give false testimony upon any examination authorized by this Act, shall be deemed guilty of the offence of giving false evidence in a judicial proceeding, and if convicted shall be liable to be punished accordingly.

59. The net proceeds of all estates in

The proceeds of estates unclaimed for 15 years to be transferred to Government.

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 Accountant General of Bengal, Madras 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 Accountant General shall be a full indemnity and discharge to the said Administrator General for any such payment or

Proviso.

transfers : Provided that this Act shall not authorize any transfer or payment of any such proceeds as aforesaid, pending any suit already instituted or which shall be hereafter instituted in respect thereof,

60. If any claim shall be hereafter made to any part of the securities, monies or proceeds which shall be carried to the account or

Mode of proceeding by claimant to recover principal money so transferred.

credit of the Government of India under the provisions of this Act, and if such claim shall be established to the satisfaction of the Accountant General to the Government of Bengal, 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 Accountant General, the claimant may apply by petition to the High Court at the Presidency town against the Government

of 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.

61. Whenever any person other than a Hindú, Muhammadan or Buddhist shall die leaving assets within the limits of the jurisdiction of a District

District Judge in certain cases to take charge of property of deceased persons, and to report to Administrator General.

Judge, and no will shall be found among the effects of the deceased, 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 letters of administration shall have been obtained by the Administrator General or by some other person, when the property shall be delivered over to the person obtaining such letters of administration, or, in the event of a will being discovered, to the person who may obtain probate of the will.

62. Nothing in this Act is intended to require the Administrator General to take proceedings to obtain letters of administration to the estate or effects

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

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 Government; nor is any thing 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.

63. Nothing contained in the Indian Succession Act, 1865, or the Indian Companies' Act, 1866, shall be deemed or taken to supersede or affect the rights, duties and privileges of the Administrators General and Officiating Administrators General of Bengal, Madras and Bombay, respectively.

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

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 1.
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.

Government of India.
HOME DEPARTMENT.
LEGISLATIVE.

A
BILL
TO
Consolidate and amend the law relating
to the office and duties of Administrator
General.

(Mr. Maine.)

Price

Military Orphan Press—No. 25 L. C.—11-12-40—189.

Just 1/10 Sept
No. 2824.

W. 1566.

From A. P. Macnall Esq^{re}
Under Secy to the Govt of India
To The Chief Secy to the Govt of Fort St. George
Dated Fort William the 19th December 1866.

Home Dept Sir,

I am directed to forward the accom-
panying copy of a Bill "to Consolidate and amend
the law relating to the Office and duties of Ad-
"ministrators General", and to intimate that
the Government of India will be glad to receive
any remarks which the Administrator General
at Madras may wish to make on the subject.
The favour of an early reply is requested.

I have the honor to be,

Sir,

Your most obed^t Servant

Arthur Moore
Under Secy to the Govt of India

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16h.

Administrative General's Office
Madras 7 February 1867

From

John Miller Esq.
Administrative General

To,

The Chief Secretary to Government
Fort Saint George

Sir,

I have the honor to acknowledge the receipt, per the 16th ultimo, of the letter from the Secretary to the Government of India, dated 19th December last to your address, enclosing copy of a Bill "to consolidate, and amend the law relating to the office and duties of Administrative General," and intimating that the Government of India will be glad to receive any remarks which I may wish to make on the subject.

2. The proposed Act is decidedly an improvement on the existing law, and I have but few suggestions or observations to make in amendment of it.

3. Section 10 provides that the office of Administrative General shall hereafter be held only by a Barrister or Advocate of 5 Years standing. Under this rule it may happen that the services of a good practical and experienced man may be lost to the Crown and public. No doubt it would be highly advantageous to restrict the

Fort Saint George
15 January 1867

for his remarks
Administrative General
Chief Secretary

1867
Jan 21/86

Received by

Under Secy to the
Govt of India
J. Miller Esq.
No. 1586.

of 19th Dec 1866
1866
1867
2824

Forwarding copy
of a Bill to consolidate
and amend the
law relating to the office
and duties of Administrative
General, and re-
questing to intimate
any remarks which the
Administrative General
may wish to make
on the subject.

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1867/2/16

the appointment to members of the legal profession, but it seems to me that it may be thrown open also to barristers who have been admitted as attorneys at law and solicitors of the Superior Courts in England as well in the High Court in this country. If however, it be deemed expedient that none but a Barrister or Advocate shall hereafter hold the appointment, I would suggest that the words "of not less than 5 years standing" be expanded, otherwise the Government may find it difficult to procure the services of a competent Barrister of 5 years standing, while there may be others better qualified of less standing available for the appointment. On this point, it is worthy of observation that a standing of 5 years is all that is required for a seat in the Bench of the High Court.

Section 12 provides that "no Administrator General shall be required to verify, otherwise than by his signature, any petition presented by him under the provisions of the Act. This section might be improved by inserting the words "or accounts" after petition and before presented. It seems to me that the signature of the Administrator General to any account presented by him to the Court, ought to be a sufficient verification of it; and if this was declared to be sufficient it would be a great saving of expense to Estates.

Section 33 is susceptible of improvement I would propose that the following proviso be introduced into the Act. "Provided that every judgment obtained against the Administrator General shall only entitle the Plaintiff to rank as a creditor

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"upon the Estate for the amount of such judgment and to be paid pro rata with other creditors of the Estate." At present there is a rush amongst creditors to obtain judgment against the Estate, and this puts the Estate to considerable expense. There is no mode of proceeding at present by which when one creditor sues and obtains a decree, all the creditors of the Estate can be made to come in and prove their claims in that one suit; I think it is very desirable therefore that the Administrator General should be empowered by law, when he is sued by one creditor, to compel all the creditors to come before the Court, and establish their claims in that one suit.

Section 34 provides for the grant by the Administrator General of certificates to principal claimants in the Estates of any person, not being Hindus, Mahomedans or Buddhists, whose debts do not exceed in the whole 500 Rs. in value in each case. If the granting of such certificates could be restricted to Estates whose debts do not exceed Rs. 1000, it would ^{save} the expense of administering to petty Estates, and would no doubt be a boon to the public.

Section 54. The effect of this section is intended to be the preventing of private individuals as well as Banks and Houses of Agency from charging Commission or Agency charges on Estates to which they administer, either as Executors or Administrators or as Agents under Powers of Attorney granted them by Executors or

or meet of him, but the object as far as Banks and Messrs
of Agency are concerned has never been realized; for it is
a well known fact that such parties administer to all
large and valuable Estates, leaving only those that are
insolvent to come to this Department and it is equally
well known that they invariably charge a Commission
or percentage on the value of Estates in their hands and
under the rule of the Chamber of Commerce for the
management of such Estates and for furnishing security
to the Court, the partners of the individual and ostensible
Administrators giving security for him and charging him and
the Estate a Commission for so doing. It is clear that the
Administrator would not undertake these trusts without some remuneration;
and thus the law is continually evaded to the pre-
judice of the Public Administrator General whose
interests, it will be necessary for the Legislature
to guard by more stringent legislation. I would suggest
that besides declaring that the Agent Administrators
shall not make or pay any such charges, there
should be an express provision under which every
violation or breach of the law shall subject the party
offending to certain prescribed penalties. I would also
propose that all parties possessing property belonging
to a deceased person whose Estate is in the charge of the
Public Officer should be required to give notice to him of
Assets in their possession or under their control. At present
the Public Officer has to send round letters making
inquiries of every one whom he may cast about
and think to be a possible holder of such Assets. This entails

an immense amount of Correspondence and it does not always
happen that his letters of inquiry are responded to. It is as
much for the interest of Government as for the ~~Administration~~
General that this Notice should be required, more especially
in the Cases of escheated or unclaimed Estates which under
Section 5 of the new Act are to be carried to the account
and Credit of Government after 15 years. There is nothing
to prevent private persons and Agency firms holding such
property from writing off escheated and unclaimed Estates in
their own Books to their own profit and it will not be
sufficient simply to require notice of such Assets being
given to the Administrator General, but it will be
advisable to empower the Chief Secretary or other public
functionary to call upon and compel private parties under
penalty to give the required Notice. If Notice of Assets
required be given as suggested the Administrator General
will administer to Estates and discover the next of Kin,
and if no next of Kin are forthcoming he will at once
make over to Government the proceeds of all such
Estates as may have remained unclaimed or to which no
heirs can be found for 15 years.

In addition to the above remarks, I would beg
leave to draw the attention of the Government to the difficulty
against which the Public Officer has to contend in
Country debtors. It would be a great boon if such debtors
could be sued in the High Court at Madras or in the

Small

Small Cause Court at the Presidency. Sometimes an Estate is insolvent and there are no available funds to its credit. There may however be outstandings, but without funds in hand, the Administrator General is unable to sue up Country debtors. For the purpose of suing up Country, a Valuer must be retained and a heavy institution fee in stamps as well as other fees to a considerable amount must be incurred, which are not incurred at the Presidency. I would here notice a recent case which I was unable to proceed. A Zemindar residing at Tanjore owes a large sum of money to the Estate of one Michael O'Donoghue. Repeated demands for payment have been made, but without success; and I am unable to sue him, because the Estate has no funds to pay the institution fee and the Valuer's fees. The heavy institution fee on the Plaintiff is necessary in the Mofussil but not in the Presidency town. I applied to the Widow to advance the requisite funds, but she is unable to do so. I made a similar application to the Creditors who are interested in the Estate, but without success. It would doubtless on the other hand be a hardship to such debtors to require them to come to the Presidency town and defend suits brought against them there. I confess I feel great difficulty in making any suggestion which would meet the end desired without injury to the rights of debtors residing up Country but if I may be allowed to make the suggestion the Government in order to prevent up Country debtors on the one hand being brought to the Presidency town, in testate Estates in a state of insolvency being protected on the other, might allow the Administrator General to have the benefit of the service of the Government Pleaders of the several Courts and might in cases where the Estate

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Estate was unable to bear the expense of the institution &c. for, allow such suits to be brought without payment of fees, in the first instance.

I have one more suggestion to offer. In the course of my tenure of office, I have received several applications to interpose and take charge of assets of deceased Hindus from some of the parties beneficially interested in such Estates; I have been in many cases unable, however, to comply with such applications, because before the Court will grant Administration in such cases they require to be satisfied that the application for Administration is made with the consent of the next of kin, that is, of all the parties whom the Court would consider entitled to administer if they chose to apply. It is impossible to look for this consent in all cases for it is only when the deceased's representatives have a quarrel about the Estate, that they or some of them ask for the interposition of the Administrator General, and very often they cannot agree even upon a single point in connection with the Estate, and are consequently driven to a suit. If the new Act provided that the Administrator General should be interposed in all cases of Native Estates to which Administration was not taken out, within a certain time and if one of the parties beneficially interested should request him to apply for Administration, I think it would meet many cases in which great difficulty is at present experienced.

I enclose the copy of the Bill, as well as the letter of the Under Secretary to the Government of India above referred to.

I have the honor to be
Sir,
Your Obedient Servant
Wm. Hunter
Administrator General

No. 1716.

From A. P. Maxwell Esq^{re}
Under Secy to the Govt of India
To The Chief Secy to the Govt of Fort St. George
Dated Fort William, the 19th February 1857.

Home Dept^l Sir,

I am directed to invite your early attention to the letter from this Office No. 1555 dated 19th December last, forwarding copy of a Bill "to consolidate and amend the law relating to the Office and duties of Administration for General" and to state that a reply thereto is awaited.

I have the honor to be,
Sir,
Your most obed^t Servant.

Arthur Smith
Under Secy to the Govt of India
for the consideration
of H. E. the Viceroy and
Governor General in
Council the annexed
copy of a letter from
the Administrator General
at Madras suggesting
certain alterations in
the

W.H.

Provincial Mr. Maxwell
Recd. Nov. 20th 1857

Administrative General
No 164

19th Feb 1857

Papers returned

No 298.

Forward his remarks
on the Bill to consolidate
and amend the law, with
reference to the draft
Administrative Genl^l

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Judicial Department
No. 269

To

The Secretary to the Government
of India,
Home Department.

Sir,

In acknowledging the receipt of Mr. Under Secretary Howells' letter of the 19 December last, ^{No. 1586.} enclosing copy of a Bill to consolidate & amend the law relating to the office and duties of Administrator General, I am directed to submit for the consideration of H.E. the Viceroy and Governor General in Council the annexed copy of a letter from the Administrator General at Madras suggesting certain alterations in the

W.D.

Received 18th Sept

Received 18th Sept
1876

18/9/76

No. 426.

Received early reply
to the reference regarding
the Bill to consolidate
& amend the law relating
to the office and duties of
Administrator General

in Section 54. The
Madras Govt. have no
other remarks to make
on the Bill. —

Fort Saint George
20th February 1867.

the provisions of the Bill.
2. The Governor in
Council concurs in the
opinion of the Adminis-
trator General that it
is not advisable to require
that the Administrator
General shall be in-
variably a Barrister
or Advocate of 5 years
standing as provided
in Section 5 of the Bill.

His Excellency in Council
would leave the office
open to Attorneys or
Solicitors and would
omit the requirement
of a standing of five
years. The Governor

~~in Council would~~
~~also attach a penalty~~
~~to the breach of the~~
~~of prohibition contained~~

The suggestion made by
the Administrator General
that the ^{value} ~~power~~ of the
writs for which certificates
may be granted under
Section 34 and 35
of the 1000 appears to be
indisposed.

1712/1713

Will relaying to
the collection
of the same.

Indicated 1867 by the front.

1712/1713

to
the deep to the south

of the same

Indicated 20 February 1867.