

ACT No. VI OF 1889.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 8th March,
1889.)

An Act to amend the Indian Succession Act, 1865, the Probate and Administration Act, 1881, the Court-fees Act, 1870, and the Indian Stamp Act, 1879, and to make provision with respect to certain other matters.

X of 1865.
V of 1881.
VII of 1870.
of 1879.

WHEREAS it is expedient to amend the Indian Succession Act, 1865, the Probate and Administration Act, 1881, the Court-fees Act, 1870, and the Indian Stamp Act, 1879, and to make provision with respect to certain other matters; It is hereby enacted as follows:—

1. (1) This Act may be called the Probate and Administration Act, 1889.

Title, extent
and com-
mencement.

(2) It applies to the whole of British India (inclusive of Upper Burma except the Shan States); and

(3) It shall come into force at once.

Indian Succession Act, 1865.

of 1865.

2. After the 4th clause of the *explanation* to section 234 of the Indian Succession Act, 1865, the following shall be added, namely:—

Amendment
of section
234, Act X,
1865.

“5th, that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Part XXXIV of this Act or has exhibited under that Part an inventory or account which is untrue in a material respect.”

endment

3. In section 244 of the same Act, for the words
“and

of section
244, Act X,
1865.

“and that the petitioner is the executor therein named”
the following shall be substituted, namely:—

“the amount of assets which are likely to come to
the petitioner’s hands, and

“that the petitioner is the executor named in the
will;”.

Amendment
of section
254, Act X,
1865.

4. For the last forty-two words of section 254 of
the same Act the following shall be substituted,
namely:—

“he having undertaken to administer the same,
and to make a full and true inventory of the said pro-
perty and credits and exhibit the same in this Court
within six months from the date of this grant or with-
in such further time as the Court may from time to
time appoint, and also to render to this Court a true
account of the said property and credits within one
year from the same date or within such further time
as the Court may from time to time appoint.”

Amendment
of section
255, Act X,
1865.

5. For the last forty-five words of section 255 of the
same Act the following shall be substituted, namely:—

“he having undertaken to administer the same,
and to make a full and true inventory of the said pro-
perty and credits and exhibit the same in this Court
within six months from the date of this grant or with-
in such further time as the Court may from time to
time appoint, and also to render to this Court a true
account of the said property and credits within one
year from the same date or within such further time
as the Court may from time to time appoint.”

Amendment
of section
256, Act X,
1865.

6. In section 256 of the same Act, for the words
“Every person to whom any grant of administration
shall be committed” the words “Every person to
whom any grant of letters of administration is com-
mitted” shall be substituted.

Substitution
of new sec-
tion for sec-
tion 277, Act
X, 1865.
Inventory
and account.

7. For section 277 of the same Act the following
shall be substituted, namely:—

“277. (1) An executor or administrator shall,
within

within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may from time to time appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the grant or within such further time as the said Court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his hands and the manner in which they have been applied or disposed of.

“(2) The High Court may from time to time prescribe the form in which an inventory or account under this section is to be exhibited.

“(3) If an executor or administrator, on being required by the Court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under section 176 of the Indian Penal Code.

XLV of 1860.

“(4) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under section 193 of that Code.”

8. In section 277A of the same Act, for the words “it is sought to obtain a grant” the words “a grant has been made”, and for the words and figures “the person applying for administration after the first day of April, 1875,” the word “administrator”, shall be substituted.

Amendment
of section
277A, Act
X, 1865.

9. (1) In section 283 of the same Act, for the words “the country in which he was domiciled” the words “British India” shall be substituted.

Amendment
of section
283, Act X,
1865.

(2) The *illustration* to the same section is hereby repealed.

10. To

Addition to
Act X, 1865.

10. To the same Act the following shall be added, namely :—

Surrender of
revoked pro-
bate or letters
of adminis-
tration.

“333. (1) When a grant of probate or letters of administration is revoked or annulled under this Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court which made the grant.

“(2) If such person wilfully and without reasonable cause omits so to deliver up the probate or letters, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment of either description for a term which may extend to three months, or with both.”

Probate and Administration Act, 1881.

Amendment
of section 50,
Act V, 1881.

11. After the 4th clause of the *explanation* to section 50 of the Probate and Administration Act, 1881, V of 1881, the following shall be added, namely :—

“5th, that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Act, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.”

Amendment
of section 76,
Act V, 1881.

12. For the portion of section 76 of the same Act beginning with the words “he having undertaken to administer the same” and ending with the words “within one year from the same date” the following shall be substituted, namely :—

“he having undertaken to administer the same and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint.”

13. For

13. For the portion of section 77 of the same Act beginning with the words "he having undertaken to administer the same" and ending with the words "within one year from the same date" the following shall be substituted, namely:—

Amendment of section 77, Act V, 1881.

"he having undertaken to administer the same, and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint."

14. For section 90 of the same Act the following shall be substituted, namely:—

Substitution of new section for section 90, Act V, 1881.

"90. (1) An executor or administrator has, subject to the provisions of this section, power to dispose, as he thinks fit, of all or any of the property for the time being vested in him under section 4.

Power of executor or administrator to dispose of property.

"(2) The power of an executor to dispose of immoveable property so vested in him is subject to any restriction which may be imposed in this behalf by the will appointing him, unless probate has been granted to him and the Court which granted the probate permits him by an order in writing, notwithstanding the restriction, to dispose of any immoveable property specified in the order in a manner permitted by the order.

"(3) An administrator may not, without the previous permission of the Court by which the letters of administration were granted,—

(a) mortgage, charge or transfer by sale, gift, exchange or otherwise any immoveable property for the time being vested in him under section 4, or

(b) lease any such property for a term exceeding five years.

"(4) A

“(4) A disposal of property by an executor or administrator in contravention of sub-section (2) or sub-section (3), as the case may be, is voidable at the instance of any other person interested in the property.

“(5) Before any probate or letters of administration is or are granted under this Act there shall be endorsed thereon or annexed thereto a copy of sub-sections (1), (2) and (4), or of sub-sections (1), (3) and (4), as the case may be.

“(6) A probate or letters of administration shall not be rendered invalid by reason of the endorsement or annexure required by the last foregoing sub-section not having been made thereon or attached thereto, nor shall the absence of such an endorsement or annexure authorize an executor or administrator to act otherwise than in accordance with the provisions of this section.”

15. For section 98 of the same Act the following shall be substituted, namely:—

“98. (1) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may from time to time appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the grant or within such further time as the said Court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his hands and the manner in which they have been applied or disposed of.

“(2) The High Court may from time to time prescribe the form in which an inventory or account under this section is to be exhibited.

“(3) If

Substitution
of new section
for section 98, Act
V, 1881.

Inventory
and account.

“ (3) If an executor or administrator, on being required by the Court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under section 176 of the Indian Penal Code.”

XLV of 1860.

“ (4) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under section 193 of that Code.”

16. In section 99 of the same Act, for the words “it is sought to obtain a grant” the words “a grant has been made”, and for the words “the person applying for administration” the word “administrator”, shall be substituted.

Amendment of section 99, Act V, 1881.

17. To the same Act the following shall be added, namely :—

Addition to Act V, 1881.

“ 157. (1) When a grant of probate or letters of administration is revoked or annulled under this Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court which made the grant.”

Surrender of revoked probate or letters of administration.

“ (2) If such person wilfully and without sufficient cause omits so to deliver up the probate or letters, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment which may extend to three months, or with both.”

Court-fees Act, 1870, and Indian Stamp Act, 1879.

18. (1) Article 16 (Administration-bond) of the second schedule to the Court-fees Act, 1870, is hereby repealed.

VII of 1870.

Amendment of Act VII, 1870, and Act I, 1879.

(2) In article 6 of the second schedule to the Court-fees Act, 1870, for the words “Bail-bond or other instrument of obligation not otherwise provided for by this Act, when given by the direction of any

Court

Court or executive authority" the following words shall be substituted, namely:—

"Bail-bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure, 1882, or the Code of Civil Procedure." X of 1882. XIV of 1882.

(3) In article 2 of the first schedule to the Indian Stamp Act, 1879, after the words "Administration-bond" the following shall be added, namely:— I of 1879.

"including a bond given under section 256 of the Indian Succession Act, 1865, section 6 of the Government Savings Banks Act, 1873, section 78 of the Probate and Administration Act, 1881, or section 9 or section 10 of the Succession Certificate Act, 1889." X of 1865. V of 1873. V of 1881. VII of 1881.

(4) In article 13 of the first schedule to the Indian Stamp Act, 1879, after the words "not otherwise provided for by this Act" there shall be added the words "or by the Court-fees Act, 1870". VII of 1870.

Miscellaneous.

Validation of acts under grants of administration already made.

19. Notwithstanding anything in section 90 of the Probate and Administration Act, 1881, a disposal of property by an executor or administrator who was appointed before the commencement of this Act, and to whom the provisions of that section were applicable, shall not be void by reason only that the consent of the Court to the disposal of the property was not obtained. V of 1881.

Recovery of penalties and forfeitures under Act VII, 1870.

20. (1) Any penalty or forfeiture under section 19G or section 19H of the Court-fees Act, 1870, may, on the certificate of the Chief Controlling Revenue-authority, be recovered from the executor or administrator as if it were an arrear of land-revenue by any Collector in any part of British India. VII of 1870.

(2) The Chief Controlling Revenue-authority may remit the whole or any part of any such penalty or forfeiture, or any part of any further penalty payable under section 19E of the said Act.

21. The

21. The following portion of section 7, clause (3), of the Act of the Lieutenant-Governor of Bengal in Council No. VII of 1880, entitled the Public Demands Recovery Act, 1880, namely :—

Repeal of part of section 7 (3), Bengal Act VII of 1880.

“or in the following sections and portions of the following Act passed by the Governor General in Council, that is to say, in Act VI of 1870, ‘the Court-fees Act,’ sections 19G, 19H,”

is hereby repealed.