

ACT NO. II OF 1890.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(*Received the assent of the Governor General on the 14th
February, 1890.*)

An Act to amend Acts XVII of 1864, X of
1865, II of 1874 and V of 1881.

WHEREAS it is expedient to amend Act XVII
of 1864 (*an Act to constitute an Office of Official
Trustee*), the Indian Succession Act, 1865, the
Administrator General's Act, 1874, and the Probate
and Administration Act, 1881; It is hereby enacted
as follows:—

X of 1865.
II of 1874.
V of 1881.

Act XVII of 1864.

1. In section 1 of Act XVII of 1864, before the definition of the expression "High Court", the following shall be inserted, namely:—

Addition to section 1, Act XVII, 1864.

"The word 'Government' shall mean, in relation to the Presidency of Fort William in Bengal, the Governor General in Council; in relation to the Presidency of Fort St. George, the Governor of Fort St. George in Council; and, in relation to the Presidency of Bombay, the Governor of Bombay in Council:"

"Government."

2. After section 1 of the said Act the following shall be inserted, namely:—

Insertion of new section after section 1, Act XVII, 1864.

"2. In this Act references to the Presidency of Fort William in Bengal, the Presidency of Fort St. George and the Presidency of Bombay shall, as regards all persons for whom the Governor General in Council has for the time being power to make laws and regulations, be read as references to the Presidency of Bengal, the Presidency of Madras and the

Construction of references to Presidencies.

Presidency

Presidency of Bombay, respectively, as those expressions are severally defined in the law for the time being in force relating to the office and duties of Administrator General."

Substitution of new section for section 5.

3. For section 5 of the said Act the following shall be substituted, namely :—

Appointment, suspension and removal of Official Trustees.

"5. Every Official Trustee appointed under this Act shall be appointed and may be suspended or removed from his office by the Government."

Amendment of section 6, Act XVII, 1864.

4. In section 6 of the said Act, for the words "Chief Justice by whom he is appointed" the word "Government" shall be substituted.

Amendment of section 7, Act XVII, 1864.

5. For the portion of section 7 of the said Act beginning with the words "It shall be lawful for the Chief Justice of the High Court" and ending with the words "it shall be lawful for the Chief Justice to appoint some person to officiate as Official Trustee" the following shall be substituted, namely :—

"It shall be lawful for the Government from time to time to grant leave of absence to the Official Trustee, but subject always to such and the like rules as may be for the time being in force as to leave of absence of officers attached to the High Court. Whenever any Official Trustee shall obtain leave of absence, it shall be lawful for the Government to appoint some person to officiate as Official Trustee,"

Addition to section 11, Act XVII, 1864.

6. To section 11 of the said Act the following shall be added, namely :—

"Provided that the High Court, by its order appointing the Official Trustee to be trustee of such property, may, for special reasons to be recorded by the Court, direct that the Official Trustee shall be entitled by way of remuneration, in respect of the capital moneys, sums and rents aforesaid, or any of them, to a commission at rates or a rate to be specified in the order and exceeding the rates or rate hereinbefore in this section prescribed."

7. To

(Section 7.)

7. To the said Act, after section 32, the following shall be added, namely:—

Addition of sections to Act XVII, 1864.

“33. The Official Trustee shall comply with such requisitions as may be made by the Government for returns and statements, in such form and manner as the Government may deem proper.

Compliance with requisitions for returns.

“34. (1) Notwithstanding anything in the foregoing provisions of this Act, the Governor General in Council, upon the occurrence of any vacancy in the office of the Official Trustee of Bengal, may, by notification in the Gazette of India,—

Division of the Presidency of Fort William in Bengal into Provinces.

(a) divide the Presidency of Fort William in Bengal into so many Provinces as he thinks fit,

(b) define the limits of each of those Provinces, and

(c) appoint an Official Trustee for each Province, and, subject to the provisions of this section, the following consequences shall thereupon ensue, namely:—

(i) the office of Official Trustee of Bengal shall cease to exist:

(ii) the Official Trustee of a Province shall have the like rights and privileges, and perform the like duties, in the territories and dominions included in the Province as the Official Trustee of Bengal had and performed as Official Trustee therein:

(iii) the functions of the Government under this Act shall, as regards the territories and dominions included in the Province, be discharged by the Governor General in Council:

(iv) the functions of whatsoever kind assigned by the foregoing provisions of this Act to the High Court of Judicature at Fort William in Bengal in respect of the territories and dominions included in a Province shall be

discharged

(Section 7.)

discharged by such High Court as the Governor General in Council may, by notification in the Gazette of India, appoint in this behalf:

(v) in the foregoing provisions of this Act, the word 'Presidency' shall be deemed to include a Province, the expression 'Chief Justice' the Chief Justice, senior Judge or sole Judge, as the case may be, of a High Court appointed by the Governor General in Council under clause (iv) of this sub-section, and the expression 'Advocate General' a Government Advocate or other officer appointed by the Governor General in Council to discharge for a Province the functions under this Act of an Advocate General for a Presidency: and,

(vi) generally, the provisions of the foregoing sections and of any other enactment for the time being in force with respect to the Official Trustee of Bengal shall, in relation to a Province, be construed, so far as may be, to apply to the Official Trustee appointed for the Province under this section.

(2) Any proceeding which was commenced before the publication of the notification dividing the Presidency of Fort William in Bengal into Provinces, and to or in which the Official Trustee of Bengal in his representative character was a party or was otherwise concerned, shall be continued as if the notification had not been published, and the Official Trustee of the Province in which the Town of Calcutta is comprised shall for the purposes of the proceeding be deemed to be the successor in office of the Official Trustee of Bengal, and shall hold and execute the trusts of which immediately before the publication of the notification the Official Trustee of Bengal was trustee in all respects as if he were such successor.

(3) The

(Sections 8-10.)

(3) The Court of the Recorder of Rangoon shall be deemed to be a High Court for the purposes of clause (iv) of sub-section (1)."

8. Every person holding the office of Official Trustee at the commencement of this Act shall be deemed to have been appointed under Act XVII of 1864 as amended by this Act.

Official Trustees holding office at commencement of this Act.

The Indian Succession Act, 1865.

X of 1865. 9. After section 326 of the Indian Succession Act, 1865, the following shall be inserted, namely:—

Addition of new section after section 326, Act X, 1865.

"326A. Where a person not having his domicile in British India has died leaving assets both in British India and in the country in which he had his domicile at the time of his death, and there have been a grant of probate or letters of administration in British India with respect to the assets there and a grant of administration in the country of domicile with respect to the assets in that country, the executor or administrator, as the case may be, in British India, after having given such notices as are mentioned in section 320 and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of, may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons."

Transfer of assets from British India to executor or administrator in country of domicile for distribution.

The Administrator General's Act, 1874.

II of 1874. 10. In clause (b) of the definition of the expression "Presidency of Bengal" in section 3 of the Administrator General's Act, 1874, the word "Burma" shall be substituted for the words "British-Burma", and to clause (a) of the definition of the expression "Presidency of Bombay" in the same section of that Act the words "and under the administration of the

Amendment of definitions of "Presidency of Bengal" and "Presidency of Bombay" in section 3, Act II, 1874.

Chief

(Sections 11-12.)

Chief Commissioner of British Baluchistan" shall be added.

Substitution of new paragraph for first paragraph of section 37, Act II, 1874.

11. (1) For the first paragraph of section 37 of the said Act, as amended by section 5 of the Administrator General's Act, 1881, beginning with the words "If in cases falling within section 36" and ending with the words "as if such letters had been granted to him," the following shall be substituted, namely:—

"If, in cases falling within section 36, no person claiming otherwise than as a creditor to be entitled to a share of the effects of the deceased obtains, within three months, a certificate from the Administrator General under the same section, or letters of administration to the estate and effects of the deceased, and such deceased was not a Hindu, Muhammadan, Parsi or Buddhist, or exempted under the Indian Succession Act, 1865, section 332, from the operation of that Act, the Administrator General may administer the estate and effects without letters of administration, in the same manner as if such letters had been granted to him;".

(2) The portion of section 5 of the Administrator General's Act, 1881, beginning with the words "and in section 37 of the same Act" and ending with the words "from the operation of that Act" is hereby repealed.

Addition of new section after section 41, Act II, 1874.

Transfer of certain assets from British India to executor or administrator in country of domicile for distribution.

12. After section 41 of the said Act the following shall be inserted, namely:—

"41A. Where a person not having his domicile in British India has died leaving assets both in British India and in the country in which he had his domicile at the time of his death, and proceedings for the administration of his estate with respect to assets in British India have been taken under section 36 or section 37, and there has been a grant of administration in the country of domicile with respect to the assets in that country, the holder of the certificate granted under section 36 or section 37, or the Administrator General, as the case may be, after having given such

notices

(Sections 13-14.)

notices as the High Court may by any general rule to be made from time to time prescribe, for creditors and others to send in to him their claims against the estate of the deceased, and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of, may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons."

13. To section 64 of the said Act the following shall be added, namely:—

Addition to section 64, Act II, 1874

"The District Judge may cause to be paid out of any property of which he or such officer has charge, or out of the proceeds of such property or of any part thereof, such sums as may appear to him to be necessary for all or any of the following purposes, namely:—

- (a) the payment of the expenses of the funeral of the deceased and of obtaining probate of his will or letters of administration to his estate and effects,
- (b) the payment of wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant, and
- (c) the relief of the immediate necessities of the family of the deceased,

and nothing in section 279, section 280 or section 281 of the Indian Succession Act, 1865, or in any other law for the time being in force with respect to rights of priority of creditors of deceased persons, shall be held to affect the validity of any payment so caused to be made."

X of 1865.

14. To Part VI, and after section 66, of the said Act the following shall be added, namely:—

Addition to Part VI, Act II, 1874

"67. The Administrator General shall comply with such

Compliance

(Section 15.)

with requisitions for returns.

such requisitions as may be made by the Government for returns and statements, in such form and manner as the Government may deem proper."

Addition to Act II, 1874, of a Part respecting the division of the Presidency of Bengal into Provinces.

15. To the said Act, after Part VI and section 67 thereof, the following shall be added, namely :—

Division of the Presidency of Bengal into Provinces.

"PART VII.

DIVISION OF THE PRESIDENCY OF BENGAL INTO PROVINCES.

68. (1) Notwithstanding anything in the foregoing provisions of this Act, the Governor General in Council, upon the occurrence of any vacancy in the office of the Administrator General of Bengal, may, by notification in the Gazette of India,—

- (a) divide the Presidency of Bengal, as defined in this Act, into so many Provinces as he thinks fit,
- (b) define the limits of each of those Provinces, and
- (c) appoint an Administrator General for each Province,

and, subject to the provisions of this section, the following consequences shall thereupon ensue, namely :—

- (i) the office of Administrator General of Bengal shall cease to exist:
- (ii) the Administrator General of a Province shall have the like rights and privileges, and perform the like duties, in the territories and dominions included in the Province as the Administrator General of Bengal had and performed as Administrator General therein :
- (iii) the functions of the Government under this Act shall, as regards the territories and dominions included in a Province, be discharged by the Governor General in Council :
- (iv) the functions of whatsoever kind assigned by the foregoing provisions of this Act

to

(Section 15.)

to the High Court at Calcutta in respect of the territories and dominions included in a Province shall be discharged by such High Court as the Governor General in Council may, by notification in the Gazette of India, appoint in this behalf, and probate or letters of administration granted to the Administrator General of the Province by the High Court so appointed shall have the same effect throughout the Presidency of Bengal, as defined in this Act, or, if the Court so directs, throughout British India, as, but for the abolition of the office of Administrator General of Bengal, probate or letters of administration granted to the holder of that office by the High Court at Calcutta would have had :

- (v) in the foregoing provisions of this Act the word 'Presidency' shall be deemed to include a Province, the expression 'Presidency-town' the place of sitting of a High Court appointed by the Governor General in Council under clause (iv) of this sub-section, and the expression 'Advocate General' a Government Advocate or other officer appointed by the Governor General in Council to discharge for a Province the functions under this Act of an Advocate General for a Presidency :
- (vi) the provisions of this Act with respect to the commission of the Administrator General of Bengal shall regulate the commission payable to the Administrator General of a Province, and
- (vii) generally, the provisions of the foregoing sections of this Act with respect to the High Court at Calcutta, and the provisions of those sections or of any other enactment

enactment with respect to the Administrator General of Bengal, shall, in relation to a Province, be construed, so far as may be, to apply to the High Court and Administrator General, respectively, appointed for the Province under this section.

(2) Any proceeding which was commenced before the publication of the notification dividing the Presidency of Bengal into Provinces and to or in which the Administrator General of Bengal in his representative character was a party or was otherwise concerned shall be continued as if the notification had not been published, and the Administrator General of the Province in which the Town of Calcutta is comprised shall for the purposes of the proceeding be deemed to be the successor in office of the Administrator General of Bengal.

(3) The Court of the Recorder of Rangoon shall be deemed to be a High Court for the purposes of clause (iv) of sub-section (1).

(4) Notwithstanding any division of the Presidency of Bengal, as defined in this Act, into Provinces under this section, the Administrator General of the Province in which the Town of Calcutta is comprised shall be deemed to be the Administrator General for the whole of the said Presidency for the purposes of the Regimental Debts Act, 1863."

26 & 27 Vic
c. 57.

The Probate and Administration Act, 1881.

Addition of new section after section 145, Act V, 1881.

Transfer of assets from British India to executor or administrator in country of domicile for distribution.

16. After section 145 of the Probate and Administration Act, 1881, the following shall be inserted, V of 1881.
namely :—

"145A. Where a person not having his domicile in British India has died leaving assets both in British India and in the country in which he had his domicile at the time of his death, and there have been a grant of probate or letters of administration in British India with respect to the assets there and a grant of administration in the country of domicile with respect

to

(Section 16.)

to the assets in that country, the executor or administrator, as the case may be, in British India, after having given such notices as are mentioned in section 139 and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of, may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons."