TESTAMENTARY JURISDICTION.

Before Remfry J.

In the goods of BHOLANATH PAL, *deceased.**

1930

July 24 ; *Aug.* 20.

Succession Certificate—Power of High Court to grant succession certificate—Procedure—Parties—Addition of party—Statute, construction of—Indian Succession Act (XXXIX of 1925)—Indian Succession Act (XVIII of 1929), s. 2—Code of Civil Procedure (Act V of 1908), O. I., r.10.

The Secretary of State for India in Council may be a proper party in an application for grant of succession certificate.

The Court can allow a party to be added at any time before the order is drawn up and terms may be imposed on the person added as a party.

Under the Indian Succession Act of 1925, read with the Amending Act of 1929, a High Court has power to grant succession certificates.

In re *Kuppuswami Nayagar* (1) relied on.

The presumption that the legislature did not intend to alter the law by an Act described as a Consolidatory Act cannot override the plain meaning of the words used.

Gilbert v. *Gilbert and Boucher* (2) referred to.

However strongly a court may feel that the legislature has overlooked a necessary provision, a court is not at liberty to make laws or amend them. The plain meaning of the words must be accepted unless it involves any absurdity or nullifies the whole object of the Act.

Bristol Guardians v. *Bristol Waterworks Company* (3) and *Salmon* v. *Duncombe* (4) relied on.

APPLICATION by Secretary of State for India in Council.

The deceased left an estate consisting of a house worth Rs. 2,000 at Panihati and three Government Promissory Notes of Rs. 1,000 each. The deceased left three daughters to whom the estate would go. One of the daughters applied for grant of letters of administration and another daughter signed the petition consenting thereto. The third daughter entered a caveat and at the hearing suggested that, instead of letters of administration, a succession

* Testamentary Suit No. 18 of 1929.

(1) (1929) I. L. R. 53 Mad. 237.
(2) [1928] P. 1.
(3) [1914] A. C. 379.
(4) (1886) 11 A. C. 627.

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certificate should issue in respect of the Government Promissory Notes only. The petitioner consented to this and Buckland J. made an order for the issue of a succession certificate.

Before the said order was drawn up, the present application was made for an order setting aside the order of Buckland J.

E. C. Ormond (for the *Advocate-General*) for the applicant. Since succession certificate was asked for, the Secretary of State ought to have been made a party and served with a notice of the petition. Even if he is not a necessary party he is a proper party and can be added at any stage of the proceedings. See Civil Procedure Code, Order I, rule 10 and *Hughes* v. *Pump House Hotel Co.* (*No. 2*) (1). And since the order of Buckland J. has not been drawn up, this is a stage of the proceedings. In the absence of Buckland J. from Calcutta, this application can be made before the Judge taking interlocutory matters. In any event, the Advocate-General has a right to intervene in the interest of the public. See section 92 of the Civil Procedure Code. In England, the Attorney-General can intervene. See *London County Council* v. *Attorney-General* (2). As to when, in England, the Attorney-General is a proper party, see *Esquimalt and Nanaimo Railway Company* v. *Wilson* (3), *In re Chamberlain's Settlement* (4) and *Yearly Practice of the Supreme Court, 1930, page 179.*

The order of Buckland J. was by consent and there is really no decision of the court as to whether the High Court ought properly to grant a succession certificate. The Secretary of State appears now on grounds of public policy for a reasoned and considered decision.

Even if the Advocate-General cannot intervene as of right, he can come in as mere *amicus curiae*, as any decision on the point as to whether the High Court

(1) [1902] 2 K. B. 485.
(2) [1902] A. C. 165.
(3) [1920] A. C. 358.
(4) [1921] 2 Ch. 533.

can grant a succession certificate or not was one of public importance. Public revenues are seriously affected by the decision.

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Under the Indian Succession Act (X of 1865), the expression "District Judge" included a Judge of the High Court, but then there were no succession certificates. Section 5 of the 1889 Act is the same as section 371 of the 1925 Act. Up till 1925, the position of the High Court was clear. It had no power to grant succession certificate, but only letters of administration. The 1925 Act was a consolidating Act and did not purport to change the law on this point. I submit that the Act of 1929 is an Act amending the 1925 Act and cannot be said to alter the law. Section 3 (*15*) of the General Clauses Act has never been repealed and should apply now. If the legislature had intended to make an alteration in the law and to give the High Court power to grant succession certificate, it would have added some positive words to the definition given in section 2 of the Indian Succession Act, 1929, such as "and shall "include a Judge of the High Court." On a proper construction of the Act of 1929, read with the Act of 1925, it should be held that the legislature had never meant the High Court to have power to grant succession certificate.

Finally, the proper procedure has not been followed in this case. It is impossible for a petition to start as one for letters of administration and end by being a petition for succession certificate. The procedure for the latter is laid down in sections 372 to 381 of the Act of 1925, while the procedure for the former is governed by section 278, *et seq.* or by the rules laid down in Chapter XXXV of the Rules of this High Court. Had it been a petition for letters of administration only, the Advocate-General would have no interest to appear. Since the proper procedure has not been followed, even if the High Court can grant a succession certificate, it should not do so in this case.

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S. M. Bose (with him *P. N. Mallik*) for the plaintiff. In the Act of 1929, the definition in section 2 does not contain the proviso to the definition given in General Clauses Act. As regards certain sections of the Indian Succession Act, it is clear that the words "District Judge" includes a Judge of the High Court and there is no reason why that should not be so in the case of these sections. The High Court has, clearly, jurisdiction to grant succession certificates, under the new Act. See *In re Kuppuswami Nayagar* (1) and the notes in 34 Calcutta Weekly Notes, page xcix.

Cur. adv. vult.

REMFRY J. The Secretary of State for India in Council applies for an order to set aside an order made by a Judge of this Court on the 22nd of May, 1930.

It appears that the suit arose out of a petition for the grant of letters of administration, and the learned Judge made an order for the issue of a succession certificate in respect of a part of the estate.

The order was made with the consent of the parties to the suit.

The Secretary of State applies to set aside that order because no notice of the filing of the cause was received by him and no opportunity to appear was afforded to him.

In the petition it is contended that notice ought to have been given to the Secretary of State and that the order is wrong because—(1) section 2 of the Indian Succession Act, 1929, does not empower this Court to grant succession certificates and (2) the proper procedure was not adopted.

It is argued that the Secretary of State is a proper, if not a necessary party under Order I, rule 10 of the Code of Civil Procedure and that as the order made by Buckland J. was not drawn up, this is a stage in

(1) (1929) I. L. R. 53 Mad. 237.

Erratum.

In Volume LVIII of the Indian Law Reports, May, 1931, Calcutta Series, at page xiii, line 8, of the Index, please *read* "I. L. R. 56 Calc. 979" *for* "I. L. R. 56 Calc. 797."

In the last line of page 17 of the "Table of Cases Reported" in the "General Index, title. etc., to the Indian Law Reports, Calcutta Series," 1930, Vol. LVII, Parts I—XII, please *read* "referred to" *for* "reported to."

the proceedings: and that the Advocate-General is entitled to appear as of right, or in any case, as *amicus curiæ*.

Counsel appearing for the parties to the suit opposed this application; as the matter is of considerable public importance I heard the parties on the merits.

In my opinion, it is unnecessary to consider the position of the Advocate-General, as I think the Secretary of State should be added as a party under Order I, rule 10. As the order has not been drawn up, this is a stage in the proceedings and I think the Secretary of State is a proper party; but, in my opinion, he can only be heard on the question as to the jurisdiction of this Court to grant a succession certificate and not as to the validity of the order allowing the amendment of the suit. The Court can impose terms on a person who seeks to be added as a party to a suit, and, in this case, the Secretary of State had no interest in the suit until the order of amendment was passed, and the question as to its validity is not one of public importance, and in my opinion the Court can allow a party to be added on the condition that he can only intervene at a particular stage in the suit and cannot question an order or orders passed before he applied to the Court.

This is not, in my opinion, a review of the order made by the learned Judge, but the position is that the proceedings are not concluded and Order I, rule 10 applies, and though, when that is possible, any application under that rule should be made to the Judge who heard the suit, in his absence another Judge can entertain it.

On the merits, the argument advanced was that under the former law a High Court had no jurisdiction to grant a succession certificate and that the Succession Act of 1925 was a consolidating Act and did not change the law, and therefore an Act amending that Act did not change the law.

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The Succession Act of 1925 contained no definition of the words "District Judge," and, accordingly, the definition in the General Clauses Act applied. Under the proviso to that definition, a Judge of a High Court is excluded from it. This caused some difficulty, as the Act of 1925, according to that definition, did not give a Judge of a High Court jurisdiction to grant probate or letters of administration.

It is argued that, in order to meet this difficulty, the Act of 1929 was passed. That Act defined the words "District Judge" as they had been defined in the General Clauses Act, but omitted the proviso.

It is contended that it could not have been the intention of the legislature by that amending Act, or at all, to give a High Court power to grant a succession certificate.

It is not suggested that the definition does not include a Judge of a High Court: for, as regards certain sections of the Succession Act of 1925, it was obviously intended that the words "District Judge" should include a Judge of a High Court. The Court is invited to hold that, although the term "District "Judge" includes a Judge of the High Court when it is used in all other sections of the Succession Act, it excludes a Judge of the High Court when it is used in the sections relating to succession certificates. There is nothing in these sections to indicate that the definition in the amending Act was not intended to apply to them.

The words used are plain and unambiguous and, read in their ordinary meaning, give a High Court jurisdiction to grant succession certificates.

The presumption that the legislature did not intend to alter the law by an Act described as a consolidatory Act cannot override the plain meaning of the words used: *Gilbert* v. *Gilbert and Boucher* (1). In my opinion to accede to the argument in this case would be to amend and not to construe the Act, and

(1) [1928] P. 1.

however strongly a court may feel that the legislature has overlooked a necessary provision or however obvious it may be that a provision has been inserted or omitted owing to the blunder of the draftsman, a court is not at liberty to make laws or amend them. See *per* Lorebourne L. C. in *Bristol Guardians* v. *Bristol Waterworks Company* (1).

The result of accepting the ordinary meaning of the words used does not involve any absurdity or nullify the whole object of the Act. See *Salmon* v. *Duncombe* (2). A Bench of the Madras High Court came to the same conclusion, but without giving any reasons. See *In re Kuppuswami Nayagar* (3).

In my opinion, the Succession Act of 1925, read with the amending Act of 1929, gives a High Court power to grant succession certificates. The order of the learned Judge will stand. The Secretary of State must pay the costs, on the footing that he appeared in a contested application for the issue of a succession certificate.

Application rejected.

Attorney for applicant: *S. S. Hodson, Government Solicitor.*

Attorney for plaintiff: *D. Shome.*

S. M.

(1) [1914] A. C. 379, 387, 388. (2) (1886) 11 A. C. 627, 634.
(3) (1929) I. L. R. 53 Mad. 237.