

*Before Mr Justice Phear.*

IN THE GOODS OF DUNCAN (DECEASED).

*Jurisdiction—Administrator-General's Act (XXIV. of 1867)—The Indian Succession Act (X. of 1865).*

1867  
September  
23 & 25.

The High Court has no power to grant Letters of Administration to the Attorney of the executor of a deceased in respect of assets situate in the Punjab. The High Court has power to grant Letters of Administration in respect of such assets to the Administrator-General. See also 15 B. L. R. App. page 3.

THIS was an application for the grant of Letters of Administration to the Administrator-General of Bengal. The facts appear in the petition of the Administrator-General, which was as follows :

“The deceased was in his life-time, and at the time of his death, a British subject, residing at Jullunder, in the Punjab, and employed as a conductor of the Army Commissariat Department in the Bengal Presidency, and departed this life on the 29th August, 1866, at Phillour, in the Punjab, having first duly made and published his last Will and Testament, whereof he appointed Serjeant Walter Codrington, of the Army Commissariat Department, his executor, and Mary Ann Duncan his (deceased's) wife, executrix ; the said Mary Ann Duncan has also since died, without taking out probate of the Will of the said deceased, but the said Walter Codrington, by a certain deed-poll, or power of attorney, dated the 1st day of December, 1866, constituted and appointed J. H. Matthews, of the town of Calcutta, his attorney, to administer the estate of the said deceased, and the said J. H. Matthews, as such attorney, on the 7th February last, obtained from this Honorable Court Letters of Administration, with a copy of the Will annexed, of the property and credits of the said deceased. Among the assets of the said deceased, there is a sum of about Rs. 6,000, deposited with the Simla Bank Corporation, Limited, which is a Company registered under the Indian Companies' Act, 1866, and which carries on business at Simla, in the Punjab, and at other places in the same province, having its Registered Office at Simla.

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“The Secretary of the Simla Bank Corporation, Limited, having been called upon by the said J. H. Matthews to recognize him as the administrator of the estate of the said deceased, and to pay or to be prepared, at due date, to pay to him, the said J. H. Matthews, the sum standing to the credit of the said deceased in the said Bank, referred to your petitioner, who intimated to the said Secretary, by letter dated the 24th of July, 1867, that the said J. H. Matthews could not, in the opinion of your petitioner, demand payment of, or give a valid and legal discharge for, the said sum so standing to the credit of the said deceased in the said Bank as aforesaid, and that, thereupon, the Secretary remitted the amount admitted to be due from the said Bank to the estate of the said deceased to the attorneys in Calcutta of the said bank to be by them paid to whoever was qualified to give a valid and legal discharge for the same, and such sum is now in the hands of the said attorneys.

“Your petitioner submits that the said sum of Rs. 6,000, or thereabouts, so in the hands of the said attorneys of the said Bank as aforesaid, is an asset of the estate of the said deceased, payable at Simla, and is realisable only in the province of the Punjab, in which province no person has, to the best of your petitioner’s knowledge and belief, applied for probate of deceased’s Will, or for Letters of Administration to deceased’s estate.

“That the amount and value of the said assets of the deceased’s estate, which are likely to come into your petitioner’s hands, in case he obtains administration of the deceased’s estate, will not exceed Rs. 6,500.”

The *Advocate General* (Mr. *Lowe* with him) for the Administrator-General.

Mr. *Marindin* for the attorney of the executor.

The *Advocate General* contented that the word “presidency” in the Administrator-General’s Act XXIV. of 1867, s. 3, includes the Punjab. That the only Court which the Administrator-General can apply to is the High Court at Calcutta, and that no one else can apply in this Court—the grant to Mr,

Matthews has no efficacy in the Punjab, see *Fewson v. Phayre* (1), and in the goods of *Mould* (2).

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Mr. *Marindin* contended, that the grant to Mr. Matthews had efficacy in the present case. The Supreme Court had jurisdiction over assets in the Punjab, and so has the High Court; except in so far as it is taken away by the Succession Act. That Act gives jurisdiction to the Chief Court of the Punjab, but does not deprive this Court of jurisdiction; and under the 25th section of the Administrator-General's Act, the Court has power to grant to the executor in all cases in which it has power to grant to the Administrator-General.

PHEAR, J.—This is an application by the Advocate-General for grant of Letters of Administration with the Will annexed, to the Administrator-General of all such assets of Duncan, deceased, within the *Presidency* of Bengal as are not within the *Province* of Bengal. The *Presidency* of Bengal, for the purposes of this application, is defined by the Administrator-General's Act of 1867. The 3rd section of that Act says,—“*Presidency of Bengal* includes the territories which are, or shall for the time being be respectively under the Governments of the Lieutenant-Governor of Bengal, the North-Western Provinces, and the Punjab, and under the administrations of the Chief Commissioner of Oudh, the Central Provinces, and British Burmah.”

“*Province*” is defined by the 3rd section of the Indian Succession Act. That section says,—“*Province* includes any division of British India, having a Court of the last resort.”

I suppose the province of which the High Court is the Court of last resort is limited by some line lying considerably short of the Punjab. This particular case falls under the operation of the Indian Succession Act, and consequently section 187 applies. This says,—“No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction within the Province shall have granted probate of the Will under which the right is claimed, or shall have granted Letters of Administration under section 180;” but by section 14 of the

(1) Taylor, 1054.

(2) 2 Taylor and Bell, 1.

Administrator-General's Act, it is said,—“so far as regards the Administrator-General of any of the Presidencies of Bengal, Madras, and Bombay, the High Court of Judicature at the presidency town shall be deemed to be a Court of competent jurisdiction within the meaning of sections 187 and 190 of the Indian Succession Act, 1865, wheresoever within the Presidency the property, to be comprised in the probate or Letters of Administration, may be situate.” Therefore, in this particular case in which the Administrator-General applies, this Court is a competent Court to give effective Letters of Administration to the Administrator-General in respect of any property up to the full limits of the Presidency as defined in the Administrator-General's Act, and those include the Punjab.

Then section 16 of the Administrator-General's Act says,—“If any person, not being a Hindoo, Mahomedan, or Budhist, or a person exempted under the Indian Succession Act, 1865, section 332, from the operation of that Act. shall have died, whether within any of the said Presidencies or not, and whether before or after the passing of this Act, and shall have left assets exceeding, at the date of the death or within one year thereafter, the value of one thousand Rupees, within any of the said Presidencies, and no person shall, within one month after his death, have applied in such Presidency for probate of a Will, or for any Letters of Administration of his estate, the Administrator-General of the Presidency in which such assets shall be is hereby required, within a reasonable time, after he shall have had notice of the death of such person, and of his having left such assets as aforesaid, to take such proceedings as may be necessary to obtain from the High Court of Judicature at the Presidency towns Letters of Administration to the effects of such person, either generally or with a Will annexed, as the case may require.” In that two contingencies are spoken of. First, there must be assets within the Presidency; and, second, no person shall have applied in such Presidency, for probate or Letters of Administration. I think I am bound to hold that the words ‘no person shall have applied within such Presidency’ must mean a person to whom the Court would have jurisdiction to give Letters of Administration; they must refer to some one

to whom the Court could have given Letters of Administration such as would be effective in regard to the assets which the Administrator-General seeks authority to administer.

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Section 15 says,—“Any Letters of Administration, or Letters *ad colligenda bona*, which shall hereafter be granted by the High Court of Judicature at any Presidency town, shall be granted to the Administrator-General of the Presidency, unless they shall be granted to the next of kin of 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, a legatee other than an universal legatee, or a friend of the deceased.”

And this clearly gives to the Administrator-General a right to the Letters of Administration, unless certain persons who possess a right by preference apply.

It is not questioned that there are assets at Simla within the Punjab, *viz.*, within this Presidency. So the first condition is satisfied. The Advocate General says, no one has applied within section 16. On the other hand, Mr. Marindin says that Mr. Matthews had applied to obtain Letters of Administration within the meaning of the section. What had occurred was this: the deceased had left a Will; the executor was living out of the local limits of the ordinary civil jurisdiction of this Court, and had appointed Mr. Matthews his attorney to apply to the Court, and who had accordingly applied and had obtained Letters of Administration with the Will annexed. Do these fall within the words of section 16, as I have interpreted them? Are they Letters of Administration which are effective in reference to assets in the Punjab?

I do not think that the grant to Mr. Matthews has any efficacy in the Punjab derivable from any authority which the High Court inherits from the Supreme Court. That is clear from the cases referred to by the Advocate General. I also think it is clear that this grant has not any such office given to it by the terms of the Succession Act. Section 242 of that Act says:

“Probate or Letters of Administration shall have effect over all the property and estate, movable or immovable, of the deceased, throughout the Province in which the same is granted,

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and shall be conclusive as to the representative title against all debtors of the deceased and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the persons to whom such probate or Letters of Administration shall have been granted."

The Province is, as I have already said, defined by the 3rd section. The Province, then, to which this Court relates, and over which alone its grants of Letters of Administration are made efficacious by the Indian Succession Act, does not extend into the Punjab.

But then Mr. Marindin argues, and that is the only point on which I have felt difficulty, that section 25 of the Administrator-General's Act gives by implication power to this Court to grant Letters of Administration to a properly qualified person in exactly the same cases and to the same extent as to the Administrator-General himself. The words are :

"If an executor or next-of-kin of the deceased, who shall not have been personally served with a citation, or had notice thereof in time to appear in pursuance thereof, shall establish to the satisfaction of the Court a claim to probate of a Will, or to Letters of Administration in preference to the Administrator-General, any Letters of Administration which shall be granted by virtue of this Act to the Administrator-General may be recalled and revoked, and probate may be granted to such executor, or Letters of Administration granted to such other person as aforesaid. Provided that no Letters of Administration which shall be granted to the Administrator-General shall be revoked, or recalled, for the cause aforesaid, except in cases in which a Will or codicil of the deceased shall be proved in the Presidency, unless the application for that purpose shall be made within six months after the grant to the Administrator-General, and the Court shall be satisfied that there has been no unreasonable delay in making the application, or in transmitting the authority under which the application shall be made." A Court does not very readily attribute to itself power and authority merely by implication from the words of a statute. It must be only where the implication cannot be avoided that it

would feel itself justified in doing so. But here the implication is not, I think, absolutely necessary. The words are—"may be recalled and revoked"—"may be granted."

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That leaves a loop-hole, and shows that the Court is not at any rate necessarily obliged to make the grant, and therefore I think there is not a necessary inference that the Court is authorised so to do, where it would have no authority independent of this Act. But in truth section 25 should be taken with section 19, as these together deal with the cases of persons applying to the Court simultaneously with, and after the Administrator-General, while Section 16 refers to the case of a person applying before him. Section 19 says, on this point—

"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, or intestate expenses thereof." It seems to me that if the words of the two sections be compared with one another, and again with the 16th section, the meaning must be "if any person comes to whom the Court could grant effective probate or Letters of Administration as regards the assets sought to be administered." The result is, I conclude, that the grant to Mr. Matthews does not extend to enable him to administer assets in the Punjab, and that this Court could not give him or the executor such a grant. It is clear then that the Administrator-General has a right to have Letters of Administration under section 16, no other person being before the Court to whom it can grant them, and I am not sure that if the Administrator-General pressed his application, I should not feel obliged to grant it at once; at the same time the Court undoubt-

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edly has a discretion in the matter. It will, if it sees any chance of the grant leading to confusion, or to the creation of conflicting titles which would end in needless litigation, refuse to grant Letters of Administration, or to grant them on terms so as to avoid such a result. In England the Court does not always feel itself obliged to grant the probate or Letters of Administration to the person who has the best right. This is a case in which there is risk of the kind which I have just suggested. I shall, therefore, grant Letters to the Administrator-General with the direction that they shall not issue for one month, to give the executor time to apply to the Punjab Court for probate, or his attorney for Letters of Administration with the Will annexed. On this being done, application may be made here for the recall of these Letters. The Administrator-General's costs to be paid out of the estate in any event.

Proctors for the Administrator-General: *Messrs. Berners, Sanderson, and Fergusson.*

Proctors for Mr. J. H. Matthews: *Messrs. Stack & Co.*

Before Mr. Justice *Markby.*

ROLLO *v.* SMITH AND OTHERS.

1867  
 Nov. 29.

*European British Subject—Age of Majority—Suit by Minor.*

A. stated that he was born in 1848; that his great grandfather was, according to the tradition of the family, a European (but of what country in Europe he did not know) residing at Madras, and his great grandmother a native, Hindu or Mahomedan; that he did not know whether his great grandfather and great grandmother were married, or who his grandmother was, or whether his grandfather was married; that his father married a lady bearing an English name; that he himself and all his relations were Christians; that he was born in Calcutta, and knew of no relatives in Europe. *Held*, that he was the legitimate descendant of a European British subject, and therefore his age of majority was 21 years.

Plaintiff being a minor, his suit was not dismissed, but he was directed to appoint a next friend to sue for him.

Mr. *Woodroffe* and Mr. *Evans* for the plaintiff.

Mr. *Ingram* (Mr. *Kennedy* with him) for the defendants.

THIS suit was brought for goods sold and delivered and upon account stated. It was objected (*inter alia*) for the defendants