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entitled to get khas possession." However, taking the point as stated by the learned counsel for the special appellant, it has been decided by the Subordinate Judge on this principle, that the right of occupancy which accrues to tenants, who have occupied or cultivated land for twelve years or upwards, does not arise in respect of the right called jalkar or fishery. The Subordinate Judge states, and we think correctly, that that is a right which may be let out by the ijaradar under the landlord, and may be enjoyed under him so long as his ijara continues, but is liable to be determined at the expiration of the ijara. If the defendant has been unable to come to terms with the plaintiff, who has re-entered on possession of the land, we think he is not entitled to retain the fishery against the plaintiff's will. The ground title which he set up appears to have failed in the judgment of the lower Appellate Court, and the plaintiff necessarily had judgment. The appeal must be dismissed with costs.

Appeal dismissed.

ORIGINAL CIVIL.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice White.

1879 *Jan.* 13 & *Feb.* 24.

IN THE GOODS OF HEWSON.

Letters of Administration to Administrator-General—Form and Extent of Grant—Succession Act (X of 1865), ss. 187, 190, 242—Administrator-General's Act (II of 1874), ss. 3, 14, 16, 66—Act to amend Succession Act (XIII of 1875), s. 2—Rules of High Court, 21st June 1875.

Grants of letters of administration to the Administrator-General are made to him by virtue of Act II of 1874 (the Administrator-General's Act), and are not in any way affected by the provisions of Act XIII of 1875 (the Act to amend the Succession Act). The form of grant should be general and unlimited.

IN this case, at the instance of the Administrator-General, an order was applied for before Mr. Justice Pontifex, for a limited grant of administration to the effects of Lieutenant

J. F. Hewson, who died leaving property in Bengal and also in the province of Scinde, which is, for the purposes of Act II of 1874, subject to the Administrator-General of Bombay. The learned Judge having doubts as to whether, since the passing of Act XIII of 1875, a grant of administration to the Administrator-General does not, unless otherwise directed by the grant, extend to any property of the deceased throughout the whole of British India: and, if so, whether he ought, in the present case, to limit the grant as desired by the Administrator-General to the Presidency of Bengal, made an interim order so limiting the grant, but referring the case to the Appellate Court that a definite order in the matter, which would have the effect of settling the practice in the future, might be made.

Mr. *Evans* for the Administrator-General.—The Acts under which letters of administration are granted are,—The Indian Succession Act (X of 1865); the Administrator-General's Act (II of 1874); and Act XIII of 1875, the Act to amend the Succession Act. Section 187 of the Indian Succession Act provides, that 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 administration under s. 180; and s. 190 provides, that no right to any part of the property of a person who has died intestate can be established in any Court of justice, unless letters of administration have first been granted by a Court of competent jurisdiction. Then s. 242 provides that probate or letters of administration shall have effect over all the property and estate, moveable and immoveable, of the deceased, throughout the province in which the same is granted. So that the effect of the Succession Act was to limit the grant to the province. The sections of the Administrator-General's Act, passed between the date of the Succession Act and the Amending Act of 1875, which are in point, are s. 3, the definition section, which defines the meaning of the word "Presidency," and following that, with regard to jurisdiction, ss. 14, 16, and 66. Section 14 makes the High Courts in the Presidency-towns Courts of competent juris-

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diction; section 16 lays down rules as to when administration of the estates of persons other than Hindus, Muhammedans or Buddhists, or persons exempted under the Succession Act, is to be by the Administrator-General of the Presidency where the assets are; and s. 66 provides that nothing in the Succession Act shall be taken to supersede or affect the rights, duties, and privileges of the Administrator-General. We contend that the whole scope of the Act gives the Administrator-General the right to have the letters of administration limited to his province. The preamble to Act XIII of 1875 recites,—"Whereas, under the Indian Succession Act, 1861, the effect of an unlimited grant of probate or letters of administration made by any Court in British India is confined to the province in which such grant is made, and whereas it is expedient to extend over British India the effect of such grant when made by a High Court;" It is then enacted in s. 2 amending s. 242 of the Succession Act,—"That probates and letters of administration granted by a High Court after the first day of April 1875 shall, unless otherwise directed by the grant, have like effect throughout the whole of British India." This Act was followed by rules of the High Court, dated the 21st June 1875, which limit the grant in ordinary cases to the province. These rules do not provide for letters of administration under the Administrator-General's Act. It appears, therefore, that the only grants which are unlimited are those under the Succession Act and the Amending Act of 1875, and that the grant to the Administrator-General should be limited to his particular province.

The following judgments were delivered :—

GARTH, C. J.—Mr. Evans has argued the case before us on behalf of the Administrator-General, and has directed our attention to the several enactments which bear upon the question, as well as to the practice which has prevailed in the other Presidencies since the passing of Act XIII of 1875.

After considering his argument, I have arrived at the conclusion, that grants of administration to an Administrator-General must still be limited to his own Presidency, and that those grants are not affected at all by the Act of 1875.

It seems to me to have been the intention of the legislature, that grants of administration to the Administrator-General should be regulated entirely by the Act of 1874.

By the 66th section of that Act it is provided that "nothing contained in the Succession Act, 1865, shall be taken to affect the rights, duties, and privileges of the Administrators-General of Bengal, Madras, and Bombay."

Then it is very important to observe, that Act XIII of 1875 does not contain any substantive provisions, but is entirely confined in its operation to amending certain sections of the Succession Act of 1865.

The recital is, that "Whereas under the Succession Act of 1865 the effect of an unlimited grant of probate or administration is confined to the province in which such grant is made, and that it is expedient to extend over British India the effect of such grants" (that is, grants made under the Succession Act), "when made by a High Court, &c."

Section 2 then enacts, that "to s. 242 of the Indian Succession Act of 1865 the following proviso shall be added:—

"Provided that probates and letters of administration granted by a High Court after the first day of April 1875 shall, unless otherwise directed by the grant, have like effect throughout the whole of British India."

The enactment, therefore, simply makes an addition to the Succession Act of 1865, and applies only, as it seems to me, to grants of administration made under that Act. And as s. 66 of the Administrator-General's Act of 1874 provides that the Succession Act of 1865 shall not affect the rights or duties of Administrators-General, I consider that those rights and duties cannot be affected by any addition which is subsequently made to the Succession Act.

If a general grant of administration to the Administator-General of Bengal had the effect of vesting in him any property belonging to the estate of the deceased situate in Madras, the rights and duties of the Administrator-General of Madras, as regards that property, would undoubtedly be affected by the grant.

I might operate certainly as an advantage to the public that

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each estate should be dealt with separately by one Administrator-General; but it might also lead to much jealousy and inconvenience as between different Administrators-General; and I cannot help thinking that the intention of the legislature in making the Act of 1875 a part of the Succession Act, was to leave the position of Administrators-General precisely as it was before.

We have desired enquiries to be made of the Registrars of the High Courts at Madras and Bombay, and we find that no alterations have been made by those Courts in grants to the Administrator-General since the Act; and that those grants have always been considered as limited to the particular province in which they are granted.

In this view of the case, it will not, I think, be necessary to limit the grant as desired by the Administrator-General, but it will be issued in the same form as it always has been, the effect of it being controlled in accordance with our present judgment.

WHITE, J.—The petition presented by the Administrator-General of Bengal in the goods of Lieutenant Hewson, deceased, shows that the intestate died possessed of certain assets within the territorial area assigned by Act II of 1874 to the Administrator-General of Bengal, and also of assets to the extent of about 1,000 rupees within Sciude, which is comprised in the territory assigned by the same Act to the Administrator-General of Bombay.

The Administrator-General, in applying for letters of administration, contended that he was entitled to a grant limited to the assets within his own territory.

The learned Judge to whom the application was made has submitted to us the question, whether, having regard to the provisions of Act XIII of 1875, he ought so to limit the grant. Act XIII of 1875, which is an Act to amend the law relating to probates and letters of administration, directs, by s. 2, that letters of administration granted by a High Court after the 1st day of April 1875 shall, unless *otherwise directed by the grant*, have effect throughout the whole of British India.

The first question that arises is whether the above section applies in the case of grants to the Administrator-General.

I am of opinion that it does not. Previous to the passing of Act XIII of 1875, letters of administration granted by the High Court of Calcutta could only have effect throughout the province, as defined by the Indian Succession Act, 1865; that is to say, throughout that division of India over which our High Court has jurisdiction. This effect was given to the grant by virtue of s. 242 coupled with s. 264 of the Indian Succession Act.

The preamble of Act XIII of 1875 refers to this fact in the following words:—"Whereas under the Indian Succession Act, 1865, the effect of an unlimited grant of letters made by any Court in British India is confined to the province in which such grant is made." The Act then proceeds, by s. 2, to amplify the effect of such grant in the case of the High Court, and it does this by enacting that a proviso shall be added to s. 242 of the Indian Succession Act. It appears to me that the intention of the legislature was to extend the effect of a High Court grant only in cases where the grant was made under the Indian Succession Act.

The 66th section of the Administrator-General's Act (II of 1874) directs that nothing contained in the Indian Succession Act of 1865 shall affect the rights, duties, and privileges of the Administrator-General. This clause is not re-enacted in Act XIII of 1875, but I think that s. 66 applies not only to the Succession Act, 1865, but also to the proviso added to s. 242 of that Act by Act XIII of 1875.

Independently of this construction, I should hold that s. 2 of Act XIII of 1875 does not apply to grants issuing to the Administrator-General.

These are not made, nor could be made, under the Indian Succession Act, nor by any power to grant administration which the High Court may have inherited from the Supreme Court. The Administrator-General has no *locus standi* to apply for letters, except under the Special Act of 1874. His right takes its root from that Act alone. Again, the High Court has, under that Act, jurisdiction to grant letters to the

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Administrator-General in many cases in which it could have no jurisdiction were the applicant an ordinary person. The Act of 1874 has assigned to the Administrator-General of Bengal a much more extensive territory than that which is subject to the High Court or than the province, as defined by the Indian Succession Act.

The late Supreme Court could only grant administration when assets were found within its jurisdiction, as defined by Charter. The High Court, except under the Administrator-General's Act, can now only grant administration when the deceased has left property within its province (s. 246 coupled with s. 264 of Act X of 1865). But under Act II of 1874 it can grant letters to the Administrator-General of Bengal, although there are no assets within its province, provided there are assets within the territory assigned to the Administrator-General; as for instance in the Punjab or the North-West Provinces (s. 14 of Act II of 1874).

It thus appears that prior to the passing of Act XIII of 1875, the High Court did, in the case of the Administrator-General, grant letters *which were not confined to the province in which the grant was made.* This circumstance, added to the exceptional position in which the Administrator-General is placed by Act II of 1874, furnishes to my mind a strong reason for holding, irrespective of the construction which extends s. 66 of Act II of 1874 to s. 2 of Act XIII of 1875, that the legislature never intended Act XIII of 1875 to apply to grants made to the Administrator-General.

The conclusion I have arrived at on this question is fortified by the opinion of Mr. Justice Green of Bombay, which, though extra judicial, is entitled to considerable weight. That learned Judge, as appears by the papers submitted by the Counsel of the Administrator-General, stated in answer to a reference made to him by the Registrar of his Court and the Administrator-General of Bombay, that "notwithstanding the precedent of the practice adopted by the High Court at Madras, he should recommend that the practice followed under Act II of 1874 should not be altered by any reference to the provisions of Act XIII of 1875."

Although of opinion that s. 2 of Act XIII of 1875 does not apply to grants to the Administrator-General, I think that such grants should not, except under special circumstances (of which none exist in the present case), be limited to the assets within the territory assigned to the Administrator-General of Bengal, or be limited in any other respect.

The grant being the creature of Act II of 1874, its form and effect must be governed by that Act until altered by the legislature. No form of grant is given by the Act, but by s. 29, when letters are granted to the Administrator-General, by virtue of his office, he is authorized to act as "*Administrator of the estate to which the letters relate.*" Beyond this statement, the Act is silent as to the area over which the grant, when once made, is to operate. It certainly does not prescribe that where the assets of the deceased person are within two or more of the territories assigned to the respective Administrators-General, the form or effect of the grant shall be different to that which it is where the assets lie wholly within the territory of one Administrator-General. Nor does it expressly give to each Administrator-General, as against his brother Administrators-General, a monopoly of the administration of the assets which happen to lie within his territory. Whether it impliedly does so or not, is a question that need not be determined now.

I am of opinion, therefore, having regard to the provisions of Act II of 1874, that the *form* of the grant in the case before us should be general and unlimited, and this is agreeable to the existing practice, as stated by Mr. Evans, the Counsel for the Administrator-General, and confirmed by the precedents which he handed to us, and in which the ordinary form of grant was general and unlimited in its terms. It is a distinct question what the effect of the grant will be, meaning by that what is the area in India over which the grant will operate. Beyond saying that its effect, whatever it may be, is not enlarged by s. 2 of Act XIII of 1875, it is unnecessary to decide that question upon the present application. The precise effect and operation of a grant under Act II of 1874 will remain to be determined, should the Administrator-General on any future occasion apply for a grant in a case where it is brought to the

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notice of the Court, that the Administrator-General of another Presidency has already obtained administration to the estate of the deceased, or if the Administrator-General of another Presidency should, by virtue of his grant, file a suit in our High Court to recover assets situate within the territory assigned to the Administrator-General of Bengal.

Attorneys for the Administrator-General: Messrs. *Roberts, Morgan, & Co.*

APPELLATE CIVIL.

Before Mr. Justice Jackson and Mr. Justice McDonell.

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Jan. 31.

TARACHAND BISWAS AND OTHERS (DEFENDANTS) *v.* RAM GOBIND CHOWDHRY AND ANOTHER (PLAINTIFFS).*

Darpatni—Bonus, Refund of.

The defendants, after purchasing a patni taluk at an auction-sale for arrears of rent under Reg. VIII of 1819, granted a darpatni lease to the plaintiffs (the former darpatnidars) and received a bonus of Rs. 1,199. The auction-sale being five years afterwards set aside,—*held*, that the plaintiffs were entitled to a refund of the bonus, although they had not been dispossessed, but had simply reverted to their former position as darpatnidars under the former patnidar.

THE plaintiffs in this case had been darpatnidars of two villages, *viz.*, Joraghat and Baliaghat, in the patni taluk of Dehi Sadipore, which also contained another village Debipore, not included in the darpatni of the plaintiffs but held by another patnidar. In 1868, the patni tenure of Dehi Sadipore was sold by auction for arrears of rent under Reg. VIII of 1819, and the plaintiffs' darpatni rights were thereby extinguished. The purchasers of Dehi Sadipore at the auction-sale were the defendants in this suit, and the plaintiffs to avoid being dis-

* Appeal from Appellate Decree, No. 360 of 1878, against the decree of H. B. Lawford, Esq., Judge of Zilla Nuddea, dated the 12th of December 1877, affirming the decree of Baboo Mohendro Nath Bose, Subordinate Judge of that District, dated the 22nd of December 1876.