The Jammu and Kashmir Probate and Administration Act, 1920

Act 29 of 1920

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THE PROBATE AND ADMINISTRATION ACT, 1977 (1920 A.D.)

(Act No. XXIX of Svt. 1977)

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THE PROBATE AND ADMINISTRATION ACT, 1977 (1920 A.D.).

Act No. XXIX of 1977.

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Ministers endorsement No. 8372, dated 11th September 1920, read with State Council Resolution No. 1 dated 8th April, 1925, (Notification No. 14-L/81).]

An Act to provide for the grant of Probates of Wills and Letters of Administration to the estates of certain deceased persons.

Preamble.–Whereas it is expedient to provide for the grant of probate of wills and letters of administration to the estates of deceased persons ; It is hereby enacted as follows :–

CHAPTER I.

Preliminary.

1. *Short title, extent and commencement.*–(1) This Act may be called the Probate and Administration Act, 1977.

(2) It extends to the whole of Jammu and Kashmir State. It shall come into force on the 1st day of Baisakh, 1978.

2. *Application.*–This Act shall apply in the case of [1][every person] dying before, on or after the date of commencement of this Act :

Provided that nothing herein contained shall be deemed to render invalid any transfer of property duly made before that date.

3. *Interpretation clause.*–In this Act, unless there be something repugnant in the subject or context,–

Province.–Province means the province of Jammu or the province of Kashmir :

Minor.–Minor means any person subject to the Majority Act, 1977, who has not attained his majority within the meaning of that Act, and any other person who has not completed his age of eighteen years ; and Minority means the status of any such person :

Will.–Will means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death :

1. Substituted by Act XVI of 1998 for every Hindu, Mohammedan and Budhist

Codicil.–Codicil means an instrument made in relation to a will, and explaining, altering or adding to its dispositions. It is considered as forming an additional part of the will ;

Specific legacy.–Specific legacy means a legacy of specified property ;

Demonstrative legacy.–Demonstrative legacy means a legacy directed to be paid out of specified property ;

Probate.–Probate means the copy of a will certified under the seal of the Court of competent jurisdiction, with a grant of administration to the estate of the testator ;

Executor.–Executor means a person to whom the execution of the last will of a deceased person is, by the testators appointment, confided ;

Administrator.–Administrator means a person appointed by competent authority to administer the estate of a deceased person when there is no executor ; and

District Judge.–District Judge means the Judge of a principal civil Court of original jurisdiction.

CHAPTER II.

Of Grant of Probate and Letters of Administration.

4. *Character and property of executor or administrator as such.*–The executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

But nothing herein contained shall vest in an executor or administrator any property of a deceased person which would otherwise have passed by survivorship to some other person.

5. *Administration with copy annexed of authenticated copy of will proved abroad.*–When a will has been proved and deposited in a Court of competent jurisdiction situated beyond the limits of the State, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

6. *Probate only to appointed executor.*–Probate can be granted only to an executor appointed by the will.

7. *Appointment express or implied.*–The appointment may be express or by necessary implication.

Illustrations.

(a) A wills that C be his executor if B will not. B is appointed executor by implication.

(b) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law, C, and adds, "but should the within-names C be not living. I do constitute and appoint B my whole and sole executrix". C is appointed executrix by implication.

(c) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words :–"I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates". The nephew is appointed an executor by implication.

8. *Persons to whom probate cannot be granted.*–Probate cannot be granted to any person who is a minor or is of unsound mind.

9. *Grant of probate to several executors simultaneously or at different times.*–When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Illustration.

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first then to A.

10. *Separate probate of codicil discovered after grant of probate.*–If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

Procedure when different executors appointed by codicil.–If different executors are appointed by codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

11. *Accrual of representation to surviving executor.*–When probate has been granted to several executors and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

12. *Effect of probate.*–Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

13. *To whom administration may not be granted.*–Letters of administration cannot be granted to any person who is a minor or is of unsound mind.

14. *Effect of letters of administration.*--Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

15. *Acts not validated by administration.*--Letters of administration do not render valid any intermediate acts of the administrator tending to the diminuation or damage of the intestates estate.

16. *Grant of administration where executor has not renounced.*--When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued calling upon the executor to accept or renounce is executorship.

Exception.--except that, when one or more of several executors has or have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

17. *Form and effect of renunciation of executorship.*--The renunciation may be made orally in the presence of the judge or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor.

18. *Procedure where executor renounces or fails to accept within time limited.*--If the executor renounce, or fail to accept, the executorship within the time limited for the acceptance or refusal thereof, the will may be proved and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.

19. *Grant of administration to universal of residuary legate.*--When the deceased has made a will, but has not appointed an executor, or

when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or

when the executor dies after having proved the will, but before he has administered all the estate of the deceased,

an universal or residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be un-administered.

20. *Right to administration of representative of deceased residuary legatee.*--When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

21. *Grant of administration where no executor, nor residuary legatee, not representative of such legatee.*--When there is no execut or and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

22. *Citation before grant of administration to legatee other than universal or residuary.*--Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

23. *To whom administration may be granted.*--When the deceased has died intestate, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable in the case such deceased, would be entitled to the whole or any part of such deceaseds estate.

When several such person apply for administration, it shall be in the discretion of the Court to grant to any one or more of them.

When no such person applies, it may be granted to a creditor of the deceased.

CHAPTER III.

Of Limited in Duration

(a).--Grants limited in duration.

24. *Probate of copy or draft of lost will.*--When the will has been lost or mislaid since the testators death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

25. *Probate of contents of lost or destroyed will.*--When the will has been lost or destroyed and no copy has been made nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

26. *Probate of copy where original exists.*--When the will is in the possession of a person, residing out of the Province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

27. *Administration until will produced.*--Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it be produced.

(b) Grants for the use and benefit of others having right.

28. *Administration with will annexed to attorney of absent executor.*--When any executor is absent from the Province in which application is made, and there is no executor within the Province willing to act, letters of administration with the will annexed may be granted to the agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

29. *Administration with will annexed to attorney of absent person, who, if present, would be entitled to administer.*--When any to whom, if present, letters of administration with the will annexed might be granted, is absent from the Province, letters of administration with the will annexed may be granted to his agent, limited as above mentioned.

30. *Administration to attorney of absent person entitled to administer is case of intestacy.*--When a person entitled to administration in case of intestacy is absent from the Province, and no person equally entitled is willing to act, letters of administration may be granted to the agent of the absent person, limited as before-mentioned.

31. *Administration during minority of sole executor or residuary legatee.*--When a minor is sole executor or sole residuary legatee, letters of administration with the will annexed may be granted to the legal guardian of such minor, or to such other person as the Court shall think fit, until the minor has attained his majority, at which period, and not before, probate of the will shall be granted to him.

32. *Administration during minority of several executors or residuary legatee.*--When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them has attained his majority.

33. *Administration for use and benefit of lunatic.*--If a sole executor or sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates estates applicable in the case of the deceased, be a minor or lunatic, letters of administration with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or if there be no such person, to such other person as the Court thinks fit to appoint, for the use and benifit of the minor or lunatic, until he attains majority or becomes of sound mind, as the case may be.

34. *Administration pendent lite.*--Pending any suit touching the validity of the will of a deceased person or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator other than the right of distributing such estate, and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

(c).--For Special Purposes.

35. *Probate limited to purpose specified in will.*--If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose and, if he should appoint an agent to take administration on his behalf, the letters of administration with the will annexed shall accordingly be limited.

36. *Administration with will annexed limited to particular purpose.*--If an executor appointed generally gives an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly.

37. *Administration limited to trust-property.*--Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf.

38. *Administration limited to suit.*--When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said suit, and until a final decree shall be made therein and carried into complete execution.

39. *Administration limited to purpose of becoming party to suit to be brought against executor or administrator.*--If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has or have been granted is absent from the Province within which the Court that has granted the probate or letters of administration is situate such Court may grant to any person whom it thinks fit letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

40. *Administration limited to collection and preservation of deceased property.*--In any case in which it appears necessary for preserving the property of a deceased person, the Court within whose district any of the property is situate may grant, to any person whom such Court thinks fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

41. *Appointment as administrator, of person other than who under ordinary circumstances would be entitled to administration.*--When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor is, at the time of the death of such person, resident out of the Province, and it appears to the Court

to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of administration, the Judge may, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as he thinks fit to be administrator;

and in every such case letters of administration may be limited or not as the Judge thinks fit.

(d).--Grants with Exception.

42. *Probate or administration with will annexed subject to exception.*--Whenever the nature of the case requires that an exception be made, probate of a will or letters of administration with the will annexed shall be granted subject to such exception.

43. *Administration with exception.*--Whenever the nature of the case requires that an exception be made letters of administration shall be granted subject to such exception.

(e).--Grants of the Rest.

44. *Probate or administration of rest.*--Whenever a grant with exception, of probate, or letters of administration with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceaseds estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceaseds estate.

(f).–Grants of Effects unadministered.

45. *Grant of effects unadministered.*–If the executor to whom probate has been granted has died leaving a part of the testators estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

46. *Rules as to grants of effects unadministered.*–In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

47. *Administration when limited grant expired, and still some part of estate unadministered.*–When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceaseds estate unadministered, letters

of administration shall be granted to those persons to whom original grants might have been made.

CHAPTER IV.

Alteration and Revocation of Grants.

48. *What errors may be rectified by Court.*–Errors in names and descriptions, or in setting forth the time and place of the deceaseds death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

49. *Procedure where codicil discovered after grant of administration with will annexed.*–If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification and the grant altered and amended accordingly.

50. *Revocation or annulment for just cause.*–The grant of probate or letters of administration may be revoked or annulled for just cause.

Explanation.–Just cause.--Just cause is–

1*st*, that the proceedings to obtain the grant were defective in substance ;

2*nd*, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case ;

3*rd*, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently ;

4*th*, that the grant has become useless and inoperative through circumstances ;

5*th*, 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.

Illustration.

(a) The Court by which the grant was made had no jurisdiction.

(b) The grant was made without citing parties who ought to have been cited.

(c) The will of which probate was obtained was forged or revoked.

(d) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(e) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(f) Since probate was granted, a later will has been discovered.

(g) Since probate was granted, codicil has been discovered which revokes or adds to the appointment of executors under the will.

(h) The person to whom probate was, or letters of administration were, granted, has subsequently become of unsound mind.

CHAPTER V.

Of the Practice in granting and revoking Probates and letters of Administration.

51. *Jurisdiction of District Judge in granting and revoking probates, etc.*—The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

52. *Power to appoint Delegate of District-Judge to deal with non-contentious cases.*—The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe :

Provided that, such appointment be made with the previous sanction of [1][the Government].

Persons so appointed shall be called District Delegates.

53. *District Judges powers as to grant of probate and administration.*— The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

54. *District Judge may order person to produce testamentary papers.*— The District Judge may order any person to produce and bring into

1. Substituted for His Highness be Act X of 1996.

Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person ;

and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct him to attend for the purpose of being examined respecting the same,

and he shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Ranbir Penal Code in case of default in not attending or in not answering such questions or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit, and had made such default.

and the costs of the proceeding shall be in the discretion of the Judge.

55. *Proceedings of District Judges Court in relation to probate and administration.*–The proceedings of the Court of the District Judge, in relation to the granting of probate and letters of administration, shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the Code of Civil Procedure.

56. *When probate or administration may be granted by District Judge.*– Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter mentioned, of the person applying for the same that the testator or intestate, as the case may be, had at the time of his decease a fixed place of abode, or any property, movable or immovable, within the jurisdiction of the Judge.

57. *Disposal of application made to Judge of district in which deceased had no fixed abode.*–When the application is made to the Judge of a district in which the deceased had no fixed abode at the time of his death, the Judge may in his discretion refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or where the application is for letters of administration, grant them absolutely, or limited to the property within his own jurisdiction.

58. *Probate and letters of administration may be granted by Delegate.*– Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition verified as hereinafter

mentioned) that the testator or intestate, as the case may be, at the time of his death had his fixed place of abode within the jurisdiction of such Delegate.

59. *Conclusiveness of probate or letters of administration.*--Probate or letters of administration shall have effect over all the property, movable or immovable, of the deceased throughout the Province in which the same is or are granted,

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 person to whom such probate or letters of administration shall have been granted :

Effect of unlimited probates etc., granted by certain Courts.--Provided that probates and letters of administration granted--

(a) by the High Court, or

(b) by a District Judge, where the deceased at the time of his death had his fixed place of abode situate within the jurisdiction of such Judge, and such Judge certifies that the value of the property affected beyond the limits of the province does not exceed six thousand rupees,

shall unless otherwise directed by the grant, have like effect throughout the whole of the State.

60. *Transmission to High Court of certificates of grants under proviso to section 59.*--(1) Where probate or letters of administration has or have been granted by the District Judge with the effect referred to in the proviso to section 59, the District Judge shall send a certificate thereof to the High Court.

(2) Every certificate referred to in sub-section (1) shall be to the following effect, namely--

I, A, B., District Judge of.....hereby certify that on the..... day of granted probate of the will (or letters of administration of the estate) of C. D. late of .....deceased, to E. F. of.....and G. H. of .....and that such probate (or letters) has (or have) effect over all the property of the deceased throughout the whole of the State;

and such certificate shall be filed by the High Court.

Where any portion of the assets has been stated by the petitioner, as hereinafter provided in sections 62 and 64, to be situated within the jurisdiction of a District Judge in another Province, the Court required to send the certificate referred in sub-section (1) shall send a copy thereof to such District Judge and such copy shall be filed by the District Judge receiving the same.

61. *Conclusiveness of application for probate or administration, if properly made and verified.*--The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorising the grant of probate or administration, and no such grant shall be impeached by reason that the testator or interstate had no fixed place of abode, or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

62. *Petition for probate.*--Application for probate or for letters of administration with the will annexed shall be made by a petition distinctly written in the language in ordinary use in proceedings before the Court in which the application is made, with the will, or, in the cases mentioned in sections 24, 25 and 26, a copy, draft or statement of the contents thereof, annexed, and stating--

the time of the testators death,

that the writing annexed is his last will and testament, or as the case may be,

that it was duly executed,

the amount of assets which are likely to come to the petitioners hands ;

and, where the application is for probate, that the petitioner is the executor named in the will.

In addition to these particulars, the petition shall further state,

when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge ; and,

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

when the application is to the District Judge and any portion of the assets likely to come to the petitioners hands is situate in another Province, the petition shall further state the amount of such assets in each Province and the District Judges, within whose jurisdiction such assets are situate.

63. *In what cases translation of will to be annexed to petition, verification of translation by person other than Court translator.*--In cases wherein the will, copy or draft is written in any language other than that in ordinary use in proceedings before the Court there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed ; or, if the will, copy or draft be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner:--

I (A, B,), do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof.

64. *Petition for letters of administration.*--Application for letters of administration shall be made by petition distinctly written as aforesaid, and stating the time and place of the deceaseds death, the family or other relatives of the deceased, and their respective residences,

the right in which the petitioner claims, the amount of assets which are likely to come to the petitioners hands.

In addition to these particulars, the petition shall further state,

when the application is to a District Judge, that the deceased at he time of his death had a fixed place, of abode or had some property situate within the jurisdiction of the Judge; and

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place abode within the jurisdiction of such Delegate.

When the application is to the District Judge and any portion of the assets likely to come to the petitioners hands is situate in another Province, the petition shall further state the amount of such assets in each Province and the District Judges within whose jurisdiction such assets are situate.

65. *Additional statements in petition for probate, etc.*--Every person applying to any of the Courts mentioned in the proviso to section 59 for probate of a will or letters of administration of an estate, intended to have effect throughout the State, shall state in his petition, in addition to the matters respectively required by sections 62 and 64, that to the best of his belief no application has been made to any other Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid,

or, where any such application has been made, the Court to which it was made, the person or persons by whom it was made and the proceedings (if any) had thereon.

And the Court to which any application is made under the proviso to section 59 may, if it think fit, reject the same.

66. *Petition for probate or administration to be signed and verified.*–The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect :-

"I(A.B.,) the petitioner in the above petition, declare that what is stated therein is true to the best of any information and belief."

67. *Verification of petition for probate by one witness to will.*–Where the application is for probate, or for letters of administration with the will annexed, the petition shall also be verified by at least one of the witnesses to the will (when procurable), in the manner or to the effect following :-

"I (C. D.), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (or mark) thereto (as the case may be) (or that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence.)"

68. *Punishment for false averment to petition or declaration.*–If any petition or declaration which is hereby required to be verified contains any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

69. *District Judge may examine petitioner in person, require further evidence and issue citations to inspect proceedings.*–In all cases it shall be lawful for the District Judge or District Delegate, if he thinks fit,

to examine the petitioner in person upon oath, and also to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

Publication of citation.–The citation shall be fixed up in some conspicuous part of the court-house, and also in the office of the Collector of the district,

and otherwise published or made known in such manner as the Judge or Delegate issuing the same may direct.

Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of a District Judge in another Province, the District Judge issuing the same shall cause a coy of the citation to be sent to such District Judge, who shall publish the same in the same manner as if it were a citation issued by himself and shall certify such publication to the District Judge who issued the citation.

70. *Caveats against grant of probate or administration*.—Caveats against the grant of probate or letters of administration may be lodged with the District Judge or a District Delegate ; and, immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge ; and

immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased has his fixed place of abode at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

71. *Form of caveat*.—The caveat shall be to the following effect :—

Let nothing be done in the matter of the estate of A.B., late of ....., deceased, who died on the.....day of .....at ....., without notice to C. D. of.....

72. *After entry of caveat no proceeding taken on petition until after notice to caveator*.—No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made or notice thereof has been given of its entry with some other Delegate, until after such notice to the persons whom the same has been entered as the Court shall think reasonable.

73. *District Delegate when not to grant probate or administration*.—A District Delegate shall not grant probate or letters of administration in any case which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Explanation.—By contention is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

74. *Power to transmit statement to District Judge in doubtful cases where no contention.*—In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, or any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

75. *Procedure where there is contention or District Delegate thinks probate or letters of administration should be refused in his Court.*—In every case in which there is contention or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge ;

unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorised to do ; and in that case the same shall be sent by him to the District Judge.

76. *Grant of probate to be under seal of Court.*—Whenever it appears to the Judge or District Delegate that probate of a will should be granted, he shall grant the same under the seal of his Court in the manner following :—

I,..... Judge of the District of .....,[or Delegate appointed for granting probate or letters of administration in (here insert the limits of the delegates jurisdiction)] here by make known that on the.....day of.....in the year ..... the last will of ....., late of.....a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to....., the executor in the said will named, 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 his 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.

The..... day of..... , 19

77. *Grant of letters of administration to be under seal of Court.*—Whenever it appears to the District Judge or District Delegate that letters of administration

to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he shall grant the same under the seal of his Court in manner following :–

Form of such grant.–I,.....Judge of the District of....., [or Delegate appointed for granting probate or letters of administration in (here insert the limits of the Delegates jurisdiction)] hereby make known that on the.....day of.....letters of administration (with or without the will annexed, as the case may be) of the deceased, of the property and credits of, the father (or as the case may be) of the deceased, 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 such date or within such further time as the Court may from time to time appoint.

The.....day of .....19 ,

78. *Administration-bond.*–Every person to whom any grant of letters of administration is committed, and, if the Judge so directs, any person to whom probate is granted shall give a bond to the Judge of the District Court, to ensure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge from time to time by any general or special order directs.

79. *Assignment of administration-bond.*–The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit,

assign the same to some proper person,

who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

80. *Time before which probate or administration shall not be granted.*–No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator or intestates death.

81. *Filing of original wills of which probate or administration with will annexed granted.*–Until a public registry for wills is established, every District Judge and District Delegate shall file and preserve among the records of his Court all

original wills of which probate or letters of administration with the will annexed may be granted by him ;

and [1][the Government] shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

82. *Grantee of probate or administration alone to sue, etc., until same revoked.*—After any grant of probate or letters of administration, no person other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, until such probate or letters of administration shall have been recalled or revoked.

83. *Procedure in contentious cases.*—In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a suit according to the provisions of the Code of Civil Procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

84. *Payment to executor or administrator before probate of administration revoked, right of such executor or administrator to recoup himself.*—Where any probate is, or letters of administration are revoked, all payments bona fide made to any executor or administrator under such probate or administration before the revocation thereof shall, notwith-standing such revocation, be a legal discharge to the person making the same ;

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself out of the assets of the deceased in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

85. *Powers to refuse letters of administration.*—Notwithstanding anything hereinbefore contained, it shall be in the discretion of the Court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Act.

86. *Appeals from orders of District Judge.*—Every order made by a District Judge or District Delegate by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals.

87. *Concurrent jurisdiction of High Court.*—The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

1. Substituted for "His Highness by Act X of 1996.

87-A. *Removal of executor or administrator and provision for successor.*–The High Court may, on application made to it, suspend, remove or discharge any private executor or administrator, and provide for the succession of another person to the office of any such executor or administrator who may cease to hold office, and the vesting in such successor of any property belonging to the estate.

87-B. *Directions to executor or administrator.*–Where probate or letters of administration in respect of any estate have been granted under this Act, the High Court may, on application made to it, give to the executor or administrator any general or special directions in regard to the estate or in regard to the administration thereof.

CHAPTER VI.

Of the Powers of an Executor or Administrator.

88. *In respect of causes of action surviving deceased, and debts due at death.*–An executor or administrator had the same power to sue in respect of all causes of action that survive the deceased and may exercise the same powers for the recovery of debts due to him at the time of his death, as the deceased had when living.

89. *Demands and right of suit of or against deceased survive to and against executor or administrator.*–All demands whatsoever, and all rights to prosecute or defend any suit or other proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators, except causes of action for defamation, assault as defined in the Ranbir Penal Code, or other personal injuries not causing the death of the party, and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

Illustration.

A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having instituted any suit. The cause of action does not survive.

90. *Power of executor or administrator to dispose of property.*–(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.

(2) The power of an executor to dispose of immovable 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 immovable 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 immovable 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 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, not shall the absence of such an endorsement or annexure authorise an executor or administrator to act otherwise than in accordance with the provisions of this section.

90-A. *General powers of administration.*–An executor or administrator may in addition to, and not in derogation of, any other powers of expenditure lawfully exercisable by him, incur expenditure–

(a) on such acts as may be necessary for the proper care and management of any property belonging to any estate administered by him, and

(b) with the sanction of the High Court, on such religious charitable and other objects, and on such improvements, as may be reasonable and case of such property

91. *Purchase by executor or administrator of deceaseds property.*–If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

92. *Powers of several executors or administrators exercisable by one.*– When there are several executors or administrators, powers of all may, in the

absence of any direction to the contrary in the will or grant of letters of administration, be exercised by any one of them who has proved the will or taken out administration.

Illustrations.

(a) One of the several executors has power to release a debt due to the deceased.

(b) One has power to surrender a lease.

(c) One has power to sell the property of the deceased, movable or immovable.

(d) One has power to assent to a legacy.

(e) One has power to endorse a promissory note payable to the deceased.

(f) The will appoints A, B, C and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

93. *Survival of powers on death of one of several executors or administrators.*— Upon the death of one or more of several executors or administrators, all the powers of the office become, in the absence of any direction to the contrary in the will or grant of letters of administration, vested in the survivors or survivor.

94. *Powers of administrator of effects unadministered.*—The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

95. *Power of administrator during minority.*—An administrator during minority has all the powers of an ordinary administrator.

96. *Powers of married executrix or administatrix.*—When probate or letters of administration shall have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

CHAPTER VII.

Of the Duties of an Executor or Administor.

97. *As to deceased's funeral ceremonies.*—It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

98. *Inventory and account.*--(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 posession, 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 sections 176 and 177 of the Ranbir Penal Code.

(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.

99. *Inventory to include property in any part of the State.*--In all cases where a grant has been made of probate or letters of administration intended to have effect throughout the whole of the State, the executor or administrator shall include in the inventory of the effects of the deceased all his movable or immovable property situate in the State ;

and the value of such property situate in each Province shall be separately stated in such inventory ;

and the probate or letter of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within the State.

100. *As to property of, and debts owing to, deceased.*--The executor or administrator shal collect, with reasonble diligence, the property of the deceased and the debts that were due to him at the time of his death.

101. *Expenses to be paid before all debts.*--Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board

and lodging for one month previous to his death, are to be paid before all debts.

102. *Expenses to be paid next after such expenses.*--The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

103. *Wages for certain services to be next paid, and then other debts.*--Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artisan or domestic servant are next to be paid, and then the other debts of the deceased according to their respective priorities (if any).

104. *Save as aforesaid, all debts to be paid equally and rateably.*--Save as aforesaid, no creditor is to have a right of priority over another.

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

105. *Debts to be paid before legacies.*--Debts of every description must be paid before any legacy.

106. *Executor or administrator not bound to pay legacies without indemnity.*--If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

107. *Abatement of general legacies, executor not to pay one legatee in preference to another.*--If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions ;

and, in the absence of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

108. *Non-abatement of specific legacy when assets sufficient to pay debts.*--Where there is a specific legacy, and the assets are sufficients for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

109. *Right under demonstrative legacy. When assets sufficient to pay debts and necessary expenses.*--Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of that fund from which the legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the gneral assets as for a legacy of the amount of such unpaid remainder.

110. *Rateable abatement of specific legacies.*--If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Illustration.

A has bequeathed to B a diamond ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 332.33P. are to be paid to B, and Rs. 666-67P. to C.

111. *Legacies treated as general for purpose of abatement.*--For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

CHAPTER VIII.

Of the Executor's Assent to a Legacy.

112. *Assent necessary to complete legatee's title.*--The assent of the executor is necessary to complete a legatee's title to his legacy.

Illustrations.

(a) A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(b) A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

113. *Effect of executor's assent to specific legacy.*--The assent of the executor to a specific bequest shall be sufficient to divest his interest as

executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Nature of assent.--This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Illustrations.

(a) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(b) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(c) A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(d) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(e) A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

114. *Conditional assent.*--The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Illustrations.

(a) A bequeaths to B his lands of Sultanpur, which at the date of the will and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(b) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

115. *Assent of executor to his own legacy.*--When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may in like manner be express or implied.

Implied assent.--Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

Illustration.

An executor takes the rent of a house or the interest of Government securities bequeathed to him, and applies it to his own use. This is assent.

116. *Effect of executor's assent.*--The assent of the executor to a legacy gives effect to it from the death of the testator.

Illustrations.

(a) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(b) A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to his legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

117. *Executor when to deliver legacies.*--An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

CHAPTER IX.

Of the Payment and Apportionment of Annuities.

118. *Commencement of annuity when no time fixed by will.*--Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

119. *When annuity, to be paid quarterly or monthly, first falls due.*--Where there is a direction that the annuity shall be paid qauarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death, and shall,

if the executor think fit, be paid when due ; but the executor shall not be bound to pay it till the end of the year.

120. *Date of successive payments when first payment directed to be made within given time, or on day certain. Apportionment where annuitant dies between times of payment.*--Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorises the first payment to be made ;

and, if the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

CHAPTER X.

Of the Investment of Funds to provide for Legacies.

121. *Investment of sum bequeathed where legacy, not specific, given for life.*--Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may, by any general rule to be made from time to time, authorise or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

122. *Investment of general legacy, to be paid at future time.*--Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

Intermediate interest.--The intermediate interest shall form part of the residue of the testator's estate.

123. *Procedure when no fund charged with, or appropriated to, annuity.*--Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, an annuity of the specified amount shall be purchased, or,

if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorise or direct.

124. *Transfer to residuary legatee of contingent bequest.*--Where a bequest is contingent, the executor is not bound to invest the amount of

the legacy, but may transfer the whole residue of the estate to the residuary legatee (if any) on his giving sufficient security for the payment of the legacy if it shall become due.

125. *Investment of residue bequeathed for life, with direction to invest in specified securities.*--Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

126. *Time and manner of conversion and investment, interest payable until investment*--Such conversion and investment as are contemplated by the last preceding section shall be made at such times and in such manner as the executor in his discretion thinks fit ;

and, until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of six per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

127. *Procedure where minor entitled to immediate payment or possession of bequest and no direction to pay to person on his behalf.*--Where, by the terms of a bequest, the lagatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge by whom, or by whose District Delegate, the probate, was, or letters of administration with the will annexed were, granted to the account of the legatee, unless the legatee be a ward of the Court of Wards ;

and if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account ;

and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid ;

and such money, when paid in, shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

63. *In what cases translation of will to be annexed to petition, verification of translation by person other than Court translator.*--In cases wherein the will, copy or draft is written in any language other than that in ordinary use in proceedings before the Court there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed ; or, if the will, copy or draft be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner:--

I (A, B,), do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof.

64. *Petition for letters of administration.*--Application for letters of administration shall be made by petition distinctly written as aforesaid, and stating the time and place of the deceaseds death, the family or other relatives of the deceased, and their respective residences,

the right in which the petitioner claims, the amount of assets which are likely to come to the petitioners hands.

In addition to these particulars, the petition shall further state,

when the application is to a District Judge, that the deceased at he time of his death had a fixed place, of abode or had some property situate within the jurisdiction of the Judge; and

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place abode within the jurisdiction of such Delegate.

When the application is to the District Judge and any portion of the assets likely to come to the petitioners hands is situate in another Province, the petition shall further state the amount of such assets in each Province and the District Judges within whose jurisdiction such assets are situate.

65. *Additional statements in petition for probate, etc.*--Every person applying to any of the Courts mentioned in the proviso to section 59 for probate of a will or letters of administration of an estate, intended to have effect throughout the State, shall state in his petition, in addition to the matters respectively required by sections 62 and 64, that to the best of his belief no application has been made to any other Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid,

or, where any such application has been made, the Court to which it was made, the person or persons by whom it was made and the proceedings (if any) had thereon.

And the Court to which any application is made under the proviso to section 59 may, if it think fit, reject the same.

66. *Petition for probate or administration to be signed and verified.*–The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect :-

"I(A.B.,) the petitioner in the above petition, declare that what is stated therein is true to the best of any information and belief."

67. *Verification of petition for probate by one witness to will.*–Where the application is for probate, or for letters of administration with the will annexed, the petition shall also be verified by at least one of the witnesses to the will (when procurable), in the manner or to the effect following :-

"I (C. D.), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (or mark) thereto (as the case may be) (or that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence.)"

68. *Punishment for false averment to petition or declaration.*–If any petition or declaration which is hereby required to be verified contains any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

69. *District Judge may examine petitioner in person, require further evidence and issue citations to inspect proceedings.*–In all cases it shall be lawful for the District Judge or District Delegate, if he thinks fit,

to examine the petitioner in person upon oath, and also to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

Publication of citation.–The citation shall be fixed up in some conspicuous part of the court-house, and also in the office of the Collector of the district,

and otherwise published or made known in such manner as the Judge or Delegate issuing the same may direct.

Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of a District Judge in another Province, the District Judge issuing the same shall cause a coy of the citation to be sent to such District Judge, who shall publish the same in the same manner as if it were a citation issued by himself and shall certify such publication to the District Judge who issued the citation.

70. *Caveats against grant of probate or administration*.—Caveats against the grant of probate or letters of administration may be lodged with the District Judge or a District Delegate ; and, immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge ; and

immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased has his fixed place of abode at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

71. *Form of caveat*.—The caveat shall be to the following effect :—

Let nothing be done in the matter of the estate of A.B., late of ....., deceased, who died on the.....day of .....at ....., without notice to C. D. of.....

72. *After entry of caveat no proceeding taken on petition until after notice to caveator*.—No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made or notice thereof has been given of its entry with some other Delegate, until after such notice to the persons whom the same has been entered as the Court shall think reasonable.

73. *District Delegate when not to grant probate or administration*.—A District Delegate shall not grant probate or letters of administration in any case which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Explanation.—By contention is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

74. *Power to transmit statement to District Judge in doubtful cases where no contention.*—In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, or any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

75. *Procedure where there is contention or District Delegate thinks probate or letters of administration should be refused in his Court.*—In every case in which there is contention or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge ;

unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorised to do ; and in that case the same shall be sent by him to the District Judge.

76. *Grant of probate to be under seal of Court.*—Whenever it appears to the Judge or District Delegate that probate of a will should be granted, he shall grant the same under the seal of his Court in the manner following :—

I,..... Judge of the District of .....,[or Delegate appointed for granting probate or letters of administration in (here insert the limits of the delegates jurisdiction)] here by make known that on the.....day of.....in the year ..... the last will of ....., late of.....a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to....., the executor in the said will named, 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 his 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.

The..... day of..... , 19

77. *Grant of letters of administration to be under seal of Court.*—Whenever it appears to the District Judge or District Delegate that letters of administration

CHAPTER XI.

Of the Produce and Interest of Legacies.

128. *Legatee's title to produce of specific legacy.*—The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Exception.—A specific bequest, contigent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy. The clear produce of it forms part of the residue of the testator's estate.

(a) A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs, the wool and lambs are the property of B.

(b) A bequeaths his Government securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(c) The testator bequeaths all his four per cent, Government promissory notes to A when he shall complete the age of 18. A, if he completes that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

129. *Residuary legatee's title to produce of residuary fund.*—The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator, and the vesting of the legacy. Such income goes as undisposed of.

Illustrations.

(a) The testator bequeaths the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(b) The testator bequeaths the residue of his property to A, when he shall complete the age of 18. A, if he completes that age, is entitled to

receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

130. *Interest when no time fixed for payment of general legacy.*--Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Exceptions.--(1) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2) Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

131. *Interest when time fixed.*--Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed. The interest up to such time forms part of the residue of the testator's estate.

Exception.--Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance, or unless the will contains a direction to the contrary.

132. *Rate of interest.*--The rate of interest shall be six per cent. per annum.

133. *No interest on arrears of annuity within first year after testator's death.*--No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

134. *Interest on sum to be invested to produce annuity.*--Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

CHAPTER XII.

Of the refunding of Legacies.

135. *Refund of legacy paid under Judge's orders.*--An executor who has paid a legacy under the order of a Judge is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.

136. *No refund if paid voluntarily.*--When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

137. *Refund when legacy becomes due on performance of condition within further time allowed.*--When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets, in such case, if further time has, under the second clause of this section, been allowed for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as if requisite to make up for the delay caused by such fraud.

138. *When each legatee compellable to refund in proportion.*--When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

139. *Distribution of assets, creditor may follow assets.*--Where an executor or administrator has given such notices as the High Court may, by any general rule to be made from time to time, prescribe, for creditors and others to sent in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets

so distributed to any person of whose claim he has not had notice at the time of such distribution ;

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

140. *Creditor may call upon legatee to refund.*--A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies, and whether the payment of the legacy by the executor was voluntary or not.

141. *When legatee, not satisfied or compelled to refund under section 140, cannot oblige one paid in full to refund.*--If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund, under the last preceding section, cannot oblige one who has received payment in full to refund, whether the lagacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

142. *When unsatisfied legatee must first proceed against executor, if solvent.*--If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent ; but, if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

143. *Limit to refunding of one legatee to another.*--The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate has been properly administered.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

144. *Refunding to be without interest.*--The refunding shall, in all cases, be without interest.

145. *Residue after usual payments to be paid to residuary legatee.*--The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

145-A. *Transfer of assets from the State to executor or administrator in country of domicile for distribution.*--Where a person not having his domicile in the State has died leaving assets both in the State 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 the state 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 the State, 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 the State 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.

CHAPTER XIII.

Of the Liability of an Executor or Administrator for Devastation.

146. *Liability of executor or administrator for devastation.*--When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Illustrations.

(a) The executor pays out of the estate an un-founded claim. He is liable to make good the loss caused by the payment.

(b) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss caused by the neglect..

(c) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

147. *Liability for neglect to get in any part of property.*--When an executor of administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

Illustrations.

(a) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount so lost.

(b) The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount of the debt.

CHAPTER XIV.

Miscellaneous.

148. *Provisions applied to administer with will annexed.*--In Chapters VIII, IX, X and XII of this Act the provisions as to an executor shall apply also to an administrator with the will annexed.

149. *Saving clause.*--Nothing herein contained shall--

(a) validate any testamentary disposition which would otherwise have been invalid ;

(b) invalidate any such disposition which would otherwise have been valid ;

(c) deprive any person of any right of maintenance to which he would otherwise have been entitled.

150. *Probate and dadministration in case of Hindu or Mohammadan or Buddhist to be granted only under this Act.*--No proceedings to obtain probate of a will, or letters of administration to the estate, of any Hindu, Muhammadan or Buddhist shall be instituted in any Court in the state except under this Act.

151 to 156. Omitted.

157. *Surrender of revoked probate or letters of administration.*— (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 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.