

(1867) 09 CAL CK 0003

Calcutta High Court

Case No: None

In Re: Goods of Duncan
(Deceased)

APPELLANT

Vs

RESPONDENT

Date of Decision: Sept. 25, 1867

Judgement

Phear, J.

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

Province" is defined by the 3rd Section of the Indian Succession Act. That section says,--" Province includes any division of British India, having a Court of the last resort.

I suppose the province of which the High Court is the Court of last resort is limited by some line lying considerably short of the Punjab. This particular case falls under the operation of the Indian Succession Act, and consequently Section 187 applies. This says,--" No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction within the province shall have granted probate of the Will under which the right is claimed, or shall have granted Letters of Administration u/s 180;" but by Section 14 of the Administrator-General's Act, it is said,--" so far as regards the Administrator-General of any of the Presidencies of Bengal, Madras, and Bombay, the High Court of Judicature at the presidency town shall be deemed to be a Court of competent jurisdiction within the

meaning of Sections 187 and 190 of the Indian Succession Act, 1865, whosoever within the Presidency the property, to be comprised in the probate or Letters of Administration, may be situate." Therefore, in this particular case in which the Administrator-General applies, this Court is a competent Court to give effective Letters of Administration to the Administrator-General in respect of any property up to the full limits of the Presidency as defined in the Administrator-General's Act, and those include the Punjab.

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

3. Section 15 says,--"Any Letters of Administration, or letters ad colligenda bona, which shall hereafter be granted by the High Court of Judicature at any Presidency town, shall be granted to the Administrator-General of the Presidency, unless they shall be granted to the next of kin of the deceased; the Administrator-General of the Presidency shall be deemed to have a right to Letters of Administration in preference to that of any person, merely on the ground of his being a creditor, a legatee other than an universal legatee, or a friend of the deceased."

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

5. It is not questioned that there are assets at Simla within the Punjab, viz., within this Presidency. So the first condition is satisfied. The Advocate-General says, no one has applied within Section 16. On the other hand, Mr. Marindin says that Mr. Matthews had applied to obtain Letters of Administration within the meaning of the

section. What had occurred was this : the deceased had left a Will; the executor was living out of the local limits of the ordinary civil jurisdiction of this Court, and had appointed Mr. Matthews his attorney to apply to the Court, and who had accordingly applied and had obtained Letters of Administration with the Will annexed. Do these fall within the words of Section 16, as I have interpreted them? Are they Letters of Administration which are effective in reference to assets in the Punjab?

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

Probate or Letters of Administration shall have effect over all the property and estate, moveable or immoveable, of the deceased, throughout the Province in which the same is 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 persons to whom such probate or Letters of Administration shall have been granted.

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

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

If an executor or next-of-kin of the deceased, who shall not have been personally served with a citation, or had notice thereof in time to appear in pursuance thereof, shall establish to the satisfaction of the Court a claim to probate of a Will, or to Letters of Administration in preference to the Administrator-General, any Letters of Administration which shall be granted by virtue of this Act to the Administrator-General may be recalled and revoked, and probate may be granted to such executor, or Letters of Administration granted to such other person as aforesaid. Provided that no Letters of Administration which shall be granted to the Administrator-General shall be revoked, or recalled, for the cause aforesaid, except in cases in which a Will or codicil of the deceased shall be proved in the Presidency, unless the application for that purpose shall be made within six months after the grant to the Administrator-General, and the Court shall be satisfied that there has been no unreasonable delay in making the application, or in transmitting the

authority under which the application shall be made." A Court does not very readily attribute to itself power and authority merely by implication from the words of a statute. It must be only where the implication cannot be avoided that it would feel itself justified in doing so. But here the implication is not, I think, absolutely necessary. The words are--"may be recalled and revoked"--"may be granted."

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

If in the course of proceedings to obtain Letters of Administration under the provisions of Section 16 or Section 17 of this Act, any executor appointed by a Will of the deceased shall appear according to the practice of the Court, and prove the Will and accept the office of executor, or if any person shall appear according to such practice, and make out his claim to Letters of Administration as next-of-kin of the deceased, and shall give such security as shall be required of him by law, or by the practice of the Court, the Court shall grant probate of the Will or Letters of Administration accordingly, and shall award to the Administrator-General his costs of the proceedings so taken by him,, to be paid out of the estate as part of the testamentary, or intestate expenses thereof." It seems to me that if the words of the two sections be compared with one another, and again with the 16th Section, the meaning must be "if any person comes to whom the Court could grant effective probate or Letters of Administration as regards the assets sought to be administered. The result is, I conclude, that the grant to Mr. Matthews does not extend to enable him to administer assets in the Punjab, and that this Court could not give him or the executor such a grant. It is clear then that the Administrator-General has a right to have Letters of Administration u/s 16, no other person being before the Court to whom it can grant them, and I am not sure that if the Administrator-General pressed his application, I should not feel obliged to grant it at once; at the same time the Court undoubtedly has a discretion in the matter. It will, if it sees any chance of the grant leading to confusion, or to the creation of conflicting titles which would end in needless litigation, refuse to grant Letters of Administration, or to grant them on terms so as to avoid such a result. In England the Court does not always feel itself obliged to grant the probate or Letters of Administration to the person who has the best right. This is a case in which there is risk of the kind which I have just suggested. I shall, therefore, grant Letters to the Administrator-General with the direction that they shall not issue for one month, to give the executor time to apply to the Punjab Court for probate, or his attorney for Letters of Administration with the Will annexed. On this being done, application may be made here for the recall of these Letters. The Administrator-General's costs to be

paid out of the estate in any event.