

(1875) 07 CAL CK 0004

Calcutta High Court

Case No: None

In the Goods of:

Shamachurn Mullick

deceased; In Re:

Rajranee Dossee and

Another

APPELLANT

Vs

RESPONDENT

Date of Decision: July 2, 1875**Citation:** (1876) ILR (Cal) 53**Hon'ble Judges:** R. Garth, C.J; Macpherson, J**Bench:** Division Bench

Judgement

R. Garth, C.J.

I am of opinion that Markby, J., was perfectly right in refusing this application. It was not made to him in the form in which it is now made to us, to amend the original grant of probate. The application to him, the only one which can properly be made the subject of appeal to us, was for the purpose of obtaining in this Court a limited grant of probate, extending to goods in the presidency of Bombay; and the question is, whether Act XIII of 1875 enabled Markby, J., to make an order of that kind. I am of opinion that it did not. The Act, no doubt, was intended to remedy some of the inconveniences pointed out by Mr. Jackson. The preamble recites the purpose for which it was passed. It says that, "whereas, under the Indian Succession Act, 1865, the effect of an unlimited grant of probate made by any Court in British India is confined to the Province in which such grant is made; and that it is expedient to extend over British India the effect of such grants, when made by a High Court." The Act then in effect provides that an unlimited grant of probate made by a High Court after the 1st day of April 1875, shall, unless otherwise directed by the grant, extend to all goods belonging to the testator throughout British India, whereas before the Act, a similar grant would only have extended to goods in the particular province in which it was made. The object of the Act being thus plainly pointed out by the preamble, it appears to me that the Act did not empower a Judge of this Court

to grant a limited probate, extending to goods in another Province, after an unlimited grant had already been made before the Act passed, extending only to goods in the Province of Bengal. I think therefore that the view taken by Markby, J., was quite correct.

2. The second branch of Mr. Jackson's application to us was to amend the original grant of probate (which had been made before the passing of the Act) by extending it to all goods belonging to the testator throughout British India. He did not ask Markby, J., to do this nor could he have done so; because he founds this part of his application upon a rule of this Court which came into operation after the date of Markby, J.'s order. We think therefore that there is clearly no ground for any appeal to us in this respect.

Macpherson, J.

3. I wish to add only one word. The fourth of the new Rules of Court of the 22nd of June (to which reference has been made) must be read along with the other Rules. It manifestly applies only to grants of the same class as the grants mentioned in Rule 1; and Rule 1 applies expressly only to cases in which the application for probate or letters of administration is made after the 1st of April 1875, and not to cases in which the application was made before that date.