

**(1868) 02 CAL CK 0005**

**Calcutta High Court**

**Case No:** None

In Re: F. Nechterlein, deceased

APPELLANT

Vs

RESPONDENT

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**Date of Decision:** Feb. 17, 1868

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### **Judgement**

Norman, J.

Mr. Wilkinson, the Officiating Administrator-General of Bengal, has applied to this Court for a grant of Letters of Administration to the estate and effects of Frederick Nechterlein, deceased, who was, in his lifetime, a British subject residing in the District of Allyghur, and died intestate in 1867, leaving property within the jurisdiction of the High Court of the North-Western Provinces, and also within the jurisdiction of this Court. The property and effects of the deceased within the jurisdiction of this Court are stated to amount to Rs. 3,875. Letters of Administration were granted to Mr. Wilkinson as Administrator-General, by the High Court of the North-Western Provinces, on the 20th of December, 1867.

2. He now applies to this Court, on the ground that the Letters of Administration so granted do not give him any right to assets, except within the Northwestern Provinces, and his petition states that at the time when he applied to the High Court of the North-Western Provinces, he was not aware that there were assets in Calcutta belonging to the intestate's estate.

3. The question whether the Letters of Administration granted by the High Court of the North-Western Provinces operate to give the Administrator-General a title to assets within the jurisdiction of the High Court at Fort William in Bengal, turns upon the construction of certain clauses of the Administrator-General's Act XXIV of 1867, read in connection with the Indian Succession Act X of 1865.

4. By the 190th Section of the last-mentioned Act, no right to any part of the property of a person who has died intestate can be established in any Court of Justice, unless Letters of Administration have first been granted by a Court of competent jurisdiction.

5. Then by Section 235," The District Judge (who in Section 3 is defined to be the Judge of a Principal Civil Court of original jurisdiction) shall have jurisdiction in granting and revoking Probates and Letters of Administration in all cases within his district.

7. The 242nd Section shows within what limits such grants operate. "Probate or Letters of Administration shall have effect upon all the property and estate, moveable and immoveable, of the deceased, throughout the province in which the same is granted, &c.," and by Section 3 "province" is defined" any division of British India having a Court of the last resort."

8. The result of these enactments is that an ordinary grant of Letters of Administration by one of the High Courts in India does not operate beyond the limits of the Province within which it exercises jurisdiction.

9. Then comes the Administrator-General's Act, the 14th Section of which enacts-- "That 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, whosoever within the Presidency the property to be comprised in the Probate or Letters of Administration, may be situate."

10. In the Administrator-General's Act, "the 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 administration of the Chief Commissioner of Oudh, the Central Provinces, and British Burmah."

11. "Presidency Town" is declared to mean "the Town of Calcutta," Madras, or Bombay."

12. The effect of these enactments is that the High Court of Judicature at Fort William in Bengal, and that High Court alone, is empowered by the 14th Section to grant to the Administrator-General Letters of Administration, which shall operate throughout the whole of the Presidency of Bengal, as defined by the 3rd Section of that Act; and it follows that the grant by the High Court of the Northwestern Provinces does not operate on assets within the jurisdiction of the High Court of Judicature at Fort William in Bengal. The grant by this Court has operation throughout the entire Presidency of Bengal. The Administrator-General's Act does not appear to contemplate a limited or partial grant in a case like the present.

13. Formerly, in England, when a diocesan grant was made, if it was subsequently discovered that there were bona notabilia elsewhere within the province, and the party, to whom the grant was made, applied to the Prerogative Court" for Letters of Administration, general letters were granted : the property was treated as wholly

unadministered under the former grant, and the Administrator was bound to exhibit an inventory and account of the whole estate in the Prerogative Court.

14. There, however, the diocesan grant was null and void. Here, considerable inconvenience and expense may be caused, if the Administrator-General acts under a double grant. But upon the understanding that the Administrator-General will apply to have the Letters of Administration granted by the High Court for the North-Western Provinces recalled, I think I am bound to grant the Letters of Administration in the terms prayed. The facts stated in the petition show that before the application of the Administrator-General to the High Court at Agra, the widow of the deceased had, in fact, abandoned the attempt to obtain Letters of Administration in her own name, and under such circumstances I do not think it necessary to order citations to issue. The costs of this application will come out of the estate.