

**JOINT/SELECT
COMMITTEE REPORT
LEGISLATIVE
ASSEMBLY
1925**

The Indian Succession Bill

List of Reports of Select or Joint Committees
presented to the Legislative Assembly in 1925.

Serial No.	Short title of the Bill.	Date of presentation.	Remarks.
1.	The Indian Soldiers (Litigation) Bill.	2.2.25.	
2.	The Obscene Publications Bill.	11.2.25.	
3.	The Code of Civil Procedure(Amendment) Bill.	13.2.25.	Copy not available
4.	The Indian Penal Code(Amendment) Bill(Use of Consent) by Dr.Hari Singh Gour.	23.2.25.	- do -
5.	The Cotton Gining and Pressing Factories Bill.	23.2.25.	
6.	The Indian Tariff(Amendment) Bill.	5.3.25.	
7.	The Indian Succession Bill.	26.8.25.	Report of the Joint Committ.
8.	The Indian Succession(Amendment) Bill(Sec.27).	26.8.25.	-do-
9.	The Code of Criminal Procedure(Amendment) Bill (Use of firearms)by Dewan Bahadur T.Rangachariar.	26.8.25.	
10.	The Indian Trade Unions Bill.	31.8.25.	
11.	The Indian Carriage of Goods by Sea Bill.	31.8.25.	- do -
12.	The Coal grading Board Bill.	31.8.25.	
13.	The Indian Limitation(Amendment) Bill.	3.9.25.	
14.	The Court-fees(Amendment) Bill.	14.9.25.	
15.	The Contempt of Courts Bill.	16.9.25.	

LEGISLATIVE DEPARTMENT.

WE, the undersigned, Members of the Joint Committee to which the Bill to consolidate the law applicable to intestate and testamentary Succession in British India was referred, have

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considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

The Committee met on 30th June, the Honourable Sir Henry Moncrieff Smith, President of the Council of State, being elected Chairman. Further sittings were held on the 1st, 3rd and 4th July, the following members being present in addition to the Chairman :—

The Honourable Sir NARASIMHA SARMA,

The Honourable Sir ALEXANDER MUDDIMAN.

The Honourable Saiyid RAZA ALI,

The Honourable Sir DEVA PRASAD SARVADHEKARY,

The Honourable Sir ARTHUR FROME,

Rai Sahib HARBILAS SARDA.

Mr. K. C. NEOGY, and

Mr. ABDUL HAYE.

A final meeting was held on the 17th August to consider the redraft of the Bill at which Diwan Bahadur M. Ramachandra Rao also was present.

2. Many of the opinions elicited on circulation of the Bill involve amendments of the existing law and this, in our opinion, is outside the scope of the Bill which has been referred to us. The Bill is purely a consolidating Bill and some of those who have submitted opinions have clearly treated it as such, and it would not be advisable, or within our competence, for us to consider amendments of the existing law in connection therewith. The papers which we have considered however indicate that there is a considerable volume of opinion in favour of amending the existing law and we invite the attention of the Government to this fact.

3. Suggestions have been made for the inclusion of the undermentioned enactments in this Bill, but for the reasons hereunder given we are not of opinion that these should be consolidated with the present Bill.

The Hindu Disposition of Property Act, 1916.—As only a part of the Act relates to succession, the consolidation of this portion alone would not simplify the Statute Book, as section 5 of the Act cannot suitably be included in the amending Bill, and this section requires that the provisions of the Act relating to succession should continue to be enacted therein.

The Special Marriages (Amendment) Act, 1923.—The principal Act is of special application and it is advisable that even the rules of succession applicable to persons who marry under that Act should be enacted in the special Act which deals with the status of such persons.

The Wills Act, 1838, and the Inheritance Act, 1839.—These relate only to wills and intestacies occurring before the 1st January, 1866, and in all probability will be spent at an early date.

The Legal Representative Suits Act, 1855.—This cannot wholly be included in the consolidating Bill; the provisions of the Act are substantially reproduced in the Bill, but we have decided *ex majori cautela* not to repeal the provisions of this Act.

We agree with the Statute Law Revision Committee that it would be difficult to incorporate the provisions of the *Indian Fatal Accidents Act, 1855*, in the consolidated Bill.

The Oudh Estates Act, 1869, and the Malabar Wills Act, 1898.—These are enactments of local interest which would not properly find a place in a general consolidating enactment. This applies also to Bombay Regulation VIII of 1827.

4. The following notes on clauses explain the amendments which we have made in the Bill.

Clause 2.—It has been pointed out that the omission of the definition of “province” given in the Indian Succession Act, 1865 (and the consequent application of the definition given in the General Clauses Act, 1897), does alter the existing law. We have, therefore, inserted in new clause (g) the original definition.

Clause 3 (1).—This has been brought into line with the provisions of section 332 of the Indian Succession Act, 1865, which operate from the date stated.

New Part III.—Original clauses 54 and 55 have been taken out of original Part IV and, with original clause 4, formed into a new Part dealing with the effect of marriage on rights of succession.

Part IV, clauses 23 to 28.—We have taken the clauses relating to consanguinity from original Part III (intestate succession) and formed them into a separate Part, new Part IV, as in Act X of 1865. The operation of these clauses is not limited to cases of intestate succession.

Clause 35.—We are of opinion that the provisions relating to the rights of a widower are more appropriately inserted here.

Clause 38.—*Illustration (c)* has been transferred to clause 40, as *illustration (d)* as the illustration properly relates to that clause.

Clause 99.—We have amended this clause to express the meaning more clearly.

Clause 111.—We have omitted *Illustration (b)* as it might give the impression that a child in the womb is excluded which is not the existing law.

Parts VI and VIII.—The amendments made are purely drafting amendments. Original clause 215 has been inserted in Part VIII as clause 211 and original clause 293 as clause 216 as they deal with the question of representative title. In clause 214(1) (a) and in the heading to the Part we have added the words “on succession” as a majority of us are of opinion that the addition is necessary to make it clear that no change has been made in the existing law.

Clause 217.—We have amended the clause to make it clear that it refers to intestate as well as testamentary succession.

Part IX, Chapter I.—We have re-arranged the provisions in the following order: (1) administration in case of intestacy, (2) probate, (3) letters of administration.

Clause 245.—The wording of section 32 of Act V of 1881 has been followed as this covers both cases.

Clause 267 (3).—The word “truly” has been added to remove any doubt as to what is clearly the intention of the provision.

Clause 278 (1) (c).—The wording has been assimilated to that in clause 274(2)(a).

Clause 291.—In the case of probate a bond can only be demanded from the special classes to whom Act V of 1881 applies.

Clause 302 (of the original Bill).—We have omitted this clause as the Chapter enunciates general principles of law which *suo vigore* apply to Hindus and the other specified communities.

Clauses 322 and 352.—The words added have been taken from sections 103 and 131 of Act V of 1881.

Clause 323.—The words omitted are merely explanatory and are not to be found in section 104 of Act V of 1881.

Clause 332.—An administrator is not mentioned in section 292 of Act X of 1865 but for the reasons given in the note on this clause attached to the original Bill we are of opinion that an administrator should also be mentioned here.

Schedule III.—The necessary omission in section 70 has been made in view of the first proviso contained in section 3 of Act XXI of 1870. We have excluded from this Schedule section 72 which deals with the revocation of privileged wills, as section 65 which permits of privileged wills being made is not included. The inclusion then of section 59 of the Indian Succession Act, 1865 (now clause 72 of the Bill) in section 2 of the Hindu Wills Act, 1870, was meaningless as section 52 of the former Act was not also included.

5. The publication ordered by the Council has been made as follows :—

In English.

<i>Gazette.</i>	<i>Date.</i>
Gazette of India	4-8-23
Fort Saint George Gazette	21-8-23
Bombay Government Gazette	4-10-23
Calcutta Gazette	5-1-23
United Provinces Gazette	25-8-23
Punjab Government Gazette	28-3-23
Burma Gazette	15-9-23
Central Provinces Gazette	25-8-23
Assam Gazette	15-8-23
Bihar and Orissa Gazette	5-9-23
Coorg District Gazette	1-9-23
Sind Official Gazette	11-10-23
North-West Frontier Gazette	12-10-23

In the Vernacular.

<i>Province.</i>	<i>Language.</i>	<i>Date.</i>
Madras	Tamil	22-4-24
	Telugu	12-8-24
	Hindustani	11-3-24
	Kanarese	30-9-24
	Malayalam	14-10-24
	Oriya	15-7-24
Burma	Burmese	24-11-23

6. We think that the Bill has not been so altered as to require re-publication. We do not suggest that the final passing of the Bill should be delayed till an amending Bill generally overhauling the law of succession has been introduced and taken through the Legislature. This would very considerably delay the passage of the present Bill, which as a purely consolidating measure should prove of great utility, and we recommend that it be passed as now amended.

H. MONCRIEFF SMITH.

B. N. SARMA.

A. P. MUDDMAN.

DEVAPRASAD SARVADHIKARY.

RAZA ALI.

A. H. FROOM.

HARBILAS SARDA.

K. C. NEOGY.

ABDUL HAYE.

M. RAMACHANDRA RAO.

The 21st August 1925.

THE INDIAN SUCCESSION BILL.

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New matter is shown in italics, and transposed matter is indicated.

A
BILL

TO

Consolidate the law applicable to intestate and testamentary succession in British India.

WHEREAS it is expedient to consolidate the law applicable to intestate and testamentary succession in British India ; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

1. This Act may be called the Indian Succession Act, 1925. Section 1, of Act X of 1865.
2. In this Act, unless there is anything repugnant in the subject or context,—
 - (a) “administrator” means a person appointed by competent authority to administer the estate of a deceased person when there is no executor ;
 - (b) “codicil” means an instrument made in relation to a will, and explaining, altering or adding to its dispositions, and shall be deemed to form part of the will ;
 - (c) “executor” means a person to whom the execution of the last will of a deceased person is, by the testator’s appointment, confided ;
 - (d) “Indian Christian” means a native of India who is, or in good faith claims to be, of unmixed Asiatic descent and who professes any form of the Christian religion ; Section 2, of Act VII of 1901.
 - (e) “minor” means any person subject to the Indian Majority Act, 1875, who has not attained his majority within the meaning of that Act, and any other person who has not completed the age of eighteen years ; and “minority” means the status of any such person ; Section 3, of Act V of 1881.
 - (f) “probate” means the copy of a will certified under the seal of a Court of competent jurisdiction with a grant of administration to the estate of the testator ;
 - (g) “province” includes any division of British India having a Court of the last resort ; and
 - (h) “will” means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death.
3. (1) The Local Government may, by notification in the local official Gazette, either retrospectively from the *sixteenth day of March, 1865*, or prospectively, exempt from the operation of any of the following provisions of this Act,

Power of Local Government to exempt any race, sect or tribe in the territories administered by the Local Government from operation of Act.

Section 332, of Act X of 1865.

IX of 1875.

namely, sections 5 to 49, 58 to 191, 212, 213 and 215 to 369, the members of any race, sect or tribe in the province, or of any part of such race, sect or tribe, to whom the Local Government considers it impossible or inexpedient to apply such provisions or any of them mentioned in the order.

(2) The Local Government may, by a like notification, revoke any such order, but not so that the revocation shall have retrospective effect. Section 2,
Schedule I,
Act XXXVIII of
1920.

(3) Persons exempted under this section or exempted from the operation of any of the provisions of the Indian Succession Act, 1865, under section 332 of that Act are in this Act referred to as "exempted persons".

PART II.

OF DOMICILE.

4. This Part shall not apply if the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina. Section 331,
Act X of
1865.

Application of Part.

5. (1) Succession to the immoveable property in British India of a person deceased shall be regulated by the law of British India, wherever such person may have had his domicile at the time of his death. Section 5,
Act X of
1865.

Law regulating succession to deceased person's immoveable and moveable property respectively.

(2) Succession to the moveable property of a person deceased is regulated by the law of the country in which such person had his domicile at the time of his death.

Illustrations.

(i) A, having his domicile in British India, dies in France, leaving moveable property in France, moveable property in England, and property, both moveable and immoveable, in British India. The succession to the whole is regulated by the law of British India.

(ii) A, an Englishman, having his domicile in France, dies in British India, and leaves property, both moveable and immoveable, in British India. The succession to the moveable property is regulated by the rules which govern, in France, the succession to the moveable property of an Englishman dying domiciled in France, and the succession to the immoveable property is regulated by the law of British India.

6. A person can have only one domicile for the purpose of the succession to his moveable property. Section 6,
Act X of
1865.

One domicile only affects succession to moveables.

7. The domicile of origin of every person of legitimate birth is in the country in which at the time of his birth his father was domiciled; or, if he is a posthumous child in the country in which his father was domiciled at the time of the father's death. Section 7
Act X of
1865.

Domicile of origin of person of legitimate birth.

Illustration.

At the time of the birth of A, his father was domiciled in England. A's domicile of origin is in England, whatever may be the country in which he was born.

8. The domicile of origin of an illegitimate child is in the country in which, at the time of his birth, his mother was domiciled. Section 8,
Act X of
1865.

9. The domicile of origin prevails until a new domicile has been acquired. Section 9,
Act X of
1865.

10. A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin. Section 10,
Act X of
1865.

Explanation.—A man is not to be deemed to have taken up his fixed habitation in British India merely by reason of his residing there in His Majesty's civil or military service, or in the exercise of any profession or calling.

Illustrations.

(i) A, whose domicile of origin is in England, proceeds to British India, where he settles as a barrister or a merchant, intending to reside there during the remainder of his life. His domicile is now in British India.

(ii) A, whose domicile is in England, goes to Austria, and enters the Austrian service, intending to remain in that service. A has acquired a domicile in Austria.

(iii) A, whose domicile of origin is in France, comes to reside in British India under an engagement with the Government of India for a certain number of years. It is his intention to return to France at the end of that period. He does not acquire a domicile in British India.

(iv) A, whose domicile is in England, goes to reside in British India for the purpose of winding up the affairs of a partnership which has been dissolved, and with the intention of returning to England as soon as that purpose is accomplished. He does not by such residence acquire a domicile in British India, however long the residence may last.

(v) A, having gone to reside in British India in the circumstances mentioned in the last preceding illustration, afterwards alters his intention, and takes up his fixed habitation in British India. A has acquired a domicile in British India.

(vi) A, whose domicile is in the French Settlement of Chandernagore, is compelled by political events to take refuge in Calcutta, and resides in Calcutta for many years in the hope of such political changes as may enable him to return with safety to Chandernagore. He does not by such residence acquire a domicile in British India.

(vii) A, having come to Calcutta in the circumstances stated in the last preceding illustration, continues to reside there after such political changes have occurred as would enable him to return with safety to Chandernagore, and he intends that his residence in Calcutta shall be permanent. A has acquired a domicile in British India.

11. Any person may acquire a domicile in British India by making and depositing in some office in British India, appointed in this behalf by the Local Government, a declaration in writing under his hand of his desire to acquire such domicile; provided that he has been resident in British India for one year immediately preceding the time of his making such declaration. Section 11,
Act X of
1865.

12. A person who is appointed by the Government of one country to be its ambassador, consul or other representative in another country does not acquire a domicile in the latter country by reason only of residing there in Section 12,
Act X of
1865.

pursuance of his appointment; nor does any other person acquire such domicile by reason only of residing with such first-mentioned person as part of his family, or as a servant.

13. A new domicile continues until the former domicile has been resumed or another has been acquired. Section 13, Act X of 1865.
 Continuance of new domicile.

14. The domicile of a minor follows the domicile of the parent from whom he derived his domicile of origin. Section 14, Act X of 1865.
 Minor's domicile.

Exception.—The domicile of a minor does not change with that of his parent, if the minor is married or holds any office or employment in the service of His Majesty, or has set up, with the consent of the parent, in any distinct business.

15. By marriage a woman acquires the domicile of her husband, if she had not the same domicile before. Section 15, Act X of 1865.
 Domicile acquired by woman on marriage.

16. A wife's domicile during her marriage follows the domicile of her husband. Section 16, Act X of 1865.
 Wife's domicile during marriage.

Exception.—The wife's domicile no longer follows that of her husband if they are separated by the sentence of a competent Court, or if the husband is undergoing a sentence of transportation.

17. Save as hereinbefore otherwise provided in this Part, a person cannot, during minority, acquire a new domicile. Section 17, Act X of 1865.
 Minor's acquisition of new domicile.

18. An insane person cannot acquire a new domicile in any other way than by his domicile following the domicile of another person. Section 18, Act X of 1865.
 Lunatic's acquisition of new domicile.

19. If a person dies leaving moveable property in British India, in the absence of proof of domicile elsewhere, succession to the property is regulated by the law of British India. Section 19, Act X of 1865.
 Succession to moveable property in British India in absence of proof of domicile elsewhere.

PART III.

MARRIAGE.

20. (1) No person shall, by marriage, acquire any interest in the property of the person whom he or she marries or become incapable of doing any act in respect of his or her own property which he or she could have done if unmarried. Section 4, Act X of 1865.
 Interests and powers not acquired nor lost by marriage.

(2) This section—

(a) shall not apply to any marriage contracted before the first day of January, 1866; Section 331, Act X of 1865.

(b) shall not apply, and shall be deemed never to have applied, to any marriage one or both of the parties to which professed at the time of the marriage the Hindu, Muhammadan, Buddhist, Sikh or Jaina religion.

21. If a person whose domicile is not in British India marries in British India a person whose domicile is in British India, neither party acquires by the marriage any rights in respect of any property of the other party not comprised in a settlement made previous to the marriage, which he or she would not acquire thereby if both were domiciled in British India at the time of the marriage.

22. (1) The property of a minor may be settled in contemplation of marriage, provided the settlement is made by the minor with the approbation of the minor's father, or, if the father is dead or absent from British India, with the approbation of the High Court.

(2) Nothing in this section or in section 21 shall apply to any will made or intestacy occurring before the first day of January, 1866, or to intestate or testamentary succession to the property of any Hindu, Muhammadan, Buddhist, Sikh or Jaina.

PART IV.

OF CONSANGUINITY.

23. Nothing in this Part shall apply to any will made or intestacy occurring before the first day of January, 1866, or to intestate or testamentary succession to the property of any Hindu, Muhammadan, Buddhist, Sikh, Jaina or Parsi.

24. Kindred or consanguinity is the connection or relation of persons descended from the same stock or common ancestor.

25. (1) Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather and great-grandfather, and so upwards in the direct ascending line; or between a man and his son, grandson, great-grandson and so downwards in the direct descending line.

(2) Every generation constitutes a degree, either ascending or descending.

(3) A person's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third degree, and so on.

26. (1) Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other.

(2) For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is necessary to reckon upwards from the person deceased to the common stock and then downwards to the collateral relative, a degree being allowed for each person, both ascending and descending.

27. For the purpose of succession, there is no distinction between those persons held for purpose of succession to be similarly related to deceased. Section 23, Act X of 1865.

- (a) between those who are related to a person deceased through his father, and those who are related to him through his mother; or
- (b) between those who are related to a person deceased by the full blood, and those who are related to him by the half blood; or
- (c) between those who were actually born in the lifetime of a person deceased and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive.

28. Degrees of kindred are computed in the manner set forth in the table of kindred set out in Schedule I. Section 24, Act X of 1865.

Illustrations.

- (i) The person whose relatives are to be reckoned, and his cousin-german, or first cousin, are, as shown in the table, related in the fourth degree; there being one degree of ascent to the father, and another to the common ancestor, the grand father; and from him one of descent to the uncle, and another to the cousin-german; making in all four degrees.
- (ii) A grandson of the brother and a son of the uncle, i.e., a great-nephew and a cousin-german, are in equal degree, being each four degrees removed.
- (iii) A grandson of a cousin-german is in the same degree as the grandson of a great-uncle, for they are both in the sixth degree of kindred.

PART V.

INTESTATE SUCCESSION.

CHAPTER I.

Preliminary.

29. (1) This Part shall not apply to any intestacy occurring before the first day of January, 1866, or to the property of any Hindu, Muhammadan, Buddhist, Sikh or Jaina. Section 331, Act X of 1865.

(2) Save as provided in sub-section (1) or by any other law for the time being in force, the provisions of this Part shall constitute the law of British India in all cases of intestacy. Section 2, Act X of 1865. Section 8, Act XXI of 1865.

30. A person is deemed to die intestate in respect of all property which he has not made a testamentary disposition which is capable of taking effect. Section 25, Act X of 1865.

As to what property deceased considered to have died intestate.

Illustrations.

(i) A has left no will. He has died intestate in respect of the whole of his property.

(ii) A has left a will, whereby he has appointed B his executor; but the will contains no other provisions. A has died intestate in respect of the distribution of his property.

(iii) A has bequeathed his whole property for an illegal purpose. A has died intestate in respect of the distribution of his property.

(iv) A has bequeathed 1,000 rupees to B and 1,000 rupees to the eldest son of C, and has made no other bequest; and has died leaving the sum of 2,000 rupees and no other property. C died before A without having ever had a son. A has died intestate in respect of the distribution of 1,000 rupees.

CHAPTER II.

RULES IN CASES OF INTESTATES OTHER THAN PARSIS.

31. Nothing in this Chapter shall apply to Parsis. Section 8,
Act XXI of
1865.

32. The property of an intestate devolves upon the wife or husband, or upon those who are of the kindred of the deceased, in the order and according to the rules hereinafter contained in this Chapter. Section 26,
Act X of
1865.

Explanation.—A widow is not entitled to the provision hereby made for her if, by a valid contract made before her marriage, she has been excluded from her distributive share of her husband's estate.

33. Where the intestate has left a widow— Section 27,
Act X of
1865.

Where intestate has left widow and lineal descendants, or widow and kindred only, or widow and no kindred.

- (a) if he has also left any lineal descendants, one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules hereinafter contained;
- (b) if he has left no lineal descendant, but has left persons who are of kindred to him, one-half of his property shall belong to his widow, and the other half shall go to those who are of kindred to him, in the order and according to the rules hereinafter contained;
- (c) if he has left none who are of kindred to him, the whole of his property shall belong to his widow.

34. Where the intestate has left no widow, his property shall go to his lineal descendants or to those who are of kindred to him, not being lineal descendants, according to the rules hereinafter contained; and, if he has left none who are of kindred to him, it shall go to the Crown. Section 28,
Act X of
1865.

Where intestate has left no widow, and where he has left no kindred.

35. A husband surviving his wife has the same rights in respect of her property, if she dies intestate, as a widow has in respect of her husband's property, if he dies intestate. Section 43, Act X of 1865.

Distribution where there are lineal descendants.

36. The rules for the distribution of the intestate's property (after deducting the widow's share, if he has left a widow) amongst his lineal descendants shall be those contained in sections 37 to 40. Section 29, Act X of 1865.

37. Where the intestate has left surviving him a child or children, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child, if there is only one, or shall be equally divided among all his surviving children. Section 30, Act X of 1865.

38. Where the intestate has not left surviving him any child, but has left a grandchild or grandchildren and no more remote descendant through a deceased grandchild, the property shall belong to his surviving grandchild if there is only one, or shall be equally divided among all his surviving grandchildren. Section 31, Act X of 1865.

Illustrations.

(i) A has three children, and no more, John, Mary and Henry. They all die before the father, John leaving two children, Mary three, and Henry four. Afterwards A dies intestate, leaving those nine grandchildren and no descendant of any deceased grandchild. Each of his grandchildren will have one-ninth.

(ii) But if Henry has died, leaving no child then the whole is equally divided between the intestate's five grandchildren, the children of John and Mary.

39. In like manner the property shall go to the surviving lineal descendants who are nearest in degree to the intestate, where they are all in the degree of great-grandchildren to him, or are all in a more remote degree. Section 32, Act X of 1865.

40. (1) If the intestate has left lineal descendants who do not all stand in the same degree of kindred to him, and the persons through whom the more remote are descended from him are dead, the property shall be divided Section 33, Act X of 1865.

Where the intestate leaves lineal descendants not all in same degree of kindred to him, and those through whom the more remote are descended are dead. into such a number of equal shares as may correspond with the number of the lineal descendants of the intestate who either stood in the nearest degree of kindred to him at his decease, or, having been of the like degree of kindred to him, died before him, leaving lineal descendants who survived him.

(2) One of such shares shall be allotted to each of the lineal descendants who stood in the nearest degree of kindred to the intestate at his decease; and one of such shares shall be allotted in respect of each of such deceased lineal descendants; and the share allotted in respect of each of such deceased lineal descendants shall belong to his surviving child or children or more remote lineal

descendants, as the case may be ; such surviving child or children or more remote lineal descendants always taking the share which his or their parent or parents would have been entitled to respectively if such parent or parents had survived the intestate.

Illustrations.

(i) A had three children, John, Mary and Henry ; John died, leaving four children, and Mary died, leaving one, and Henry alone survived the father. On the death of A, intestate, one-third is allotted to Henry, one-third to John's four children, and the remaining third to Mary's one child.

(ii) A left no child, but left eight grandchildren, and two children of a deceased grandchild. The property is divided into nine parts, one of which is allotted to each grandchild, and the remaining one-ninth is equally divided between the two great-grandchildren.

(iii) A has three children, John, Mary and Henry; John dies leaving four children ; and one of John's children dies leaving two children. Mary dies leaving one child. A afterwards dies intestate. One-third of his property is allotted to Henry, one-third to Mary's child, and one-third is divided into four parts, one of which is allotted to each of John's three surviving children, and the remaining part is equally divided between John's two grandchildren.

(iv) A has two children, and no more ; John and Mary. John dies before his father, leaving his wife pregnant. Then A dies, leaving Mary surviving him, and in due time a child of John is born. A's property is to be equally divided between Mary and the posthumous child.

Distribution where there are no lineal descendants.

41. Where an intestate has left no lineal descendants, the rules for the distribution of his property (after deducting the widow's share, if he has left a widow) shall be those contained in sections 42 to 48.

Section 34, Act X of 1865.

Rules of distribution where intestate has left no lineal descendants.

42. If the intestate's father is living, he shall succeed to the property.

Section 35, Act X of 1865.

Where intestate's father living.

43. If the intestate's father is dead, but the intestate's mother is living and there are also brothers or sisters of the intestate living, and there is no child living of any deceased brother or sister, the mother and each living brother or sister shall succeed to the property in equal shares.

Section 36, Act X of 1865.

Where intestate's father dead but his mother, brothers and sisters living.

Illustration.

A dies intestate, survived by his mother and two brothers of the full blood, John and Henry, and a sister Mary, who is the daughter of his mother but not of his father. The mother takes one-fourth, each brother takes one-fourth and Mary, the sister of half blood, takes one-fourth.

44. If the intestate's father is dead, but the intestate's mother is living, and if any brother or sister and the child or children of any brother or sister who may have died in the intestate's lifetime are also living, then the mother and each living brother or sister, and the living child or children of each deceased brother or sister, shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Section 37, Act X of 1865.

Where intestate's father dead and his mother, a brother or sister, and children of any deceased brother or sister, living.

Illustration.

A, the intestate, leaves his mother, his brothers John and Henry, and also one child of a deceased sister, Mary,

and two children of George, a deceased brother of the half blood who was the son of his father but not of his mother. The mother takes one-fifth, John and Henry each take one-fifth, the child of Mary takes one-fifth, and the two children of George divide the remaining one-fifth equally between them.

45. If the intestate's father is dead, but the intestate's mother is Section: Act X of 1865.

Where intestate's father dead and his mother and children of any deceased brother or sister living, and the brothers and sisters are all dead, but all or any of them have left children who survived the intestate, the mother and the child or children of each deceased brother or sister shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Illustration.

A, the intestate, leaves no brother or sister, but leaves his mother and one child of a deceased sister, Mary, and two children of a deceased brother, George. The mother takes one-third, the child of Mary takes one-third, and the children of George divide the remaining one-third equally between them.

46. If the intestate's father is dead, but the intestate's mother is Section: Act 1865.

Where intestate's father dead, but his mother living and no brother, sister, nephew or niece, living, and there is neither brother, nor sister, nor child of any brother or sister of the intestate, the property shall belong to the mother.

47. Where the intestate has left neither lineal descendant, nor father, Section: Act 1865.

Where intestate has left neither lineal descendant, nor father, nor mother, nor mother, the property shall be divided equally between his brothers and sisters and the child or children of such of them as may have died before him. such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

48. Where the intestate has left neither lineal descendant, nor parent, Section: Act 1865.

Where intestate has left neither lineal descendant, nor brother, nor sister, nor parent, nor brother, nor sister, his property shall be divided equally among those of his relatives who are in the nearest degree of kindred to him

Illustrations.

(i) A, the intestate, has left a grandfather and a grandmother and no other relative standing in the same or a nearer degree of kindred to him. They, being in the second degree, will be entitled to the property in equal shares, exclusive of any uncle or aunt of the intestate, uncles and aunts being only in the third degree.

(ii) A, the intestate, has left a great-grandfather, or a great-grandmother, and uncles and aunts, and no other relative standing in the same or a nearer degree of kindred to him. All of these being in the third degree will take equal shares.

(iii) A, the intestate, left a great-grandfather, an uncle and a nephew, but no relative standing in a nearer degree of kindred to him. All of these being in the third degree will take equal shares.

(iv) Ten children of one brother or sister of the intestate, and one child of another brother or sister of the intestate, constitute the class of relatives of the nearest degree of kindred to him. They will each take one-eleventh of the property.

Where a distributive share in the property of a person who has died intestate is claimed by a child, or any descendant of a child, of such person, no money or other property which the intestate may, during his life, have paid, given or settled to, or for the advancement of, the child by whom or by whose descendant the claim is made shall be taken into account in estimating such distributive share.

CHAPTER III.

SPECIAL RULES FOR PARSI INTESTATES.

50. Where a Parsi dies leaving a widow and children, the property of which he dies intestate shall be divided among the widow and children, so that the share of each son shall be double the share of the widow, and that her share shall be double the share of each daughter.

51. Where a female Parsi dies leaving a widower and children, the property of which she dies intestate shall be divided among the widower and such children, so that his share shall be double the share of each of the children.

52. When a Parsi dies leaving children but no widow the property of which he dies intestate shall be divided amongst the children, so that the share of each son shall be four times the share of each daughter.

53. When a female Parsi dies leaving children but no widower, the property of which she dies intestate shall be divided amongst the children in equal shares.

54. If any child of a Parsi intestate has died in his or her life time, the widow or widower and issue of such child shall take the share which such child would have taken if living at the intestate's death in such manner as if such deceased child had died immediately after the intestate's death.

55. Where a Parsi dies leaving a widow or widower, but without leaving any lineal descendants,—

(a) his or her father and mother, if both are living, or one of them if the other is dead, shall take one moiety of the property in respect of which he or she dies intestate, and the widow or widower shall take the other moiety, provided that, where both the father and the mother of the intestate survive him or her, the father's share shall be double the share of the mother;

(b) where neither the father nor the mother of the intestate survives him or her, the intestate's relatives on the father's side, in the order specified in Part I of Schedule II, shall take the moiety

which the father and the mother would have taken if they had survived the intestate. The next of kin standing first in Part I of that Schedule shall be preferred to those standing second, the second to the third, and so on in succession, provided that the property shall be so distributed as that each male shall take double the share of each female standing in the same degree of propinquity;

- (c) where there are no relatives on the father's side, the intestate's widow or widower shall take the whole.

56. When a Parsi dies leaving neither lineal descendants nor a widow Section 7. Act XXI of 1865.

Division of property when the intestate leaves neither widow nor widower, nor lineal descendants.

or widower, his or her next of kin, in the order set forth in Part II of Schedule II, shall be entitled to succeed to the whole of the property as to which he or she dies intestate. The next of kin standing first in Part II of the same Schedule shall be preferred to those standing second, the second to the third, and so on in succession, provided that the property shall be so distributed as that each male shall take double the share of each female standing in the same degree of propinquity.

PART VI.

TESTAMENTARY SUCCESSION.

CHAPTER I.

Introductory.

57. The provisions of this Part which are set out in Schedule III shall, Sections 2 & 3, Act XXI of 1870. subject to the restrictions and modifications specified therein, apply—

Application of certain provisions of Part to a class of wills made by Hindus, etc.

- (a) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina, on or after the first day of September, 1870, within the territories which at the said date were subject to the Lieutenant-Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and
- (b) to all such wills and codicils made outside those territories and limits so far as relates to immoveable property situate within those territories or limits;

Provided that marriage shall not revoke any such will or codicil.

58. (1) The provisions of this Part shall not Section 331 Act X of 1865. apply to testamentary succession to the property of any Muhammadan nor, save as provided by section 57, to testamentary succession to the property of any Hindu, Buddhist, Sikh or Jaina; nor shall they apply to any will made before the first day of January, 1866.

(2) Save as provided in sub-section (1) or by Section 2. Act X of 1865. any other law for the time being in force, the provisions of this Part shall constitute the law of British India applicable to all cases of testamentary succession.

CHAPTER II.

OF WILLS AND CODICILS.

59. Every person of sound mind not being a ^{Section 46,}
 Person capable of making wills, minor may dispose of ^{Act X of}
 his property by will. 1865.

Explanation 1.—A married woman may dispose by will of any property which she could alienate by her own act during her life.

Explanation 2.—Persons who are deaf or dumb or blind are not thereby incapacitated for making a will if they are able to know what they do by it.

Explanation 3.—A person who is ordinarily insane may make a will during an interval in which he is of sound mind.

Explanation 4.—No person can make a will while he is in such a state of mind, whether arising from intoxication or from illness or from any other cause, that he does not know what he is doing.

Illustrations.

(i) A can perceive what is going on in his immediate neighbourhood, and can answer familiar questions, but has not a competent understanding as to the nature of his property, or the persons who are of kindred to him, or in whose favour it would be proper that he should make his will. A cannot make a valid will.

(ii) A executes an instrument purporting to be his will, but he does not understand the nature of the instrument nor the effect of its provisions. This instrument is not a valid will.

(iii) A being very feeble and debilitated, but capable of exercising a judgment as to the proper mode of disposing of his property, makes a will. This is a valid will.

60. A father, whatever his age may be, may by ^{Section 47,}
 Testamentary guardian, will appoint a guardian or ^{Act X of}
 guardians for his child 1865.
 during minority.

61. A will or any part of a will, the making of ^{Section 48,}
 Will obtained by fraud, which has been caused by ^{Act X of}
 coercion or importunity. fraud or coercion, or by 1865.
 such importunity as takes
 away the free agency of the testator, is void.

Illustrations.

(i) A falsely and knowingly represents to the testator that the testator's only child is dead, or that he has done some undutiful act and thereby induces the testator to make a will in his, A's favour; such will has been obtained by fraud, and is invalid.

(ii) A, by fraud and deception, prevails upon the testator to bequeath a legacy to him. The bequest is void.

(iii) A, being a prisoner by lawful authority, makes his will. The will is not invalid by reason of the imprisonment.

(iv) A threatens to shoot B, or to burn his house or to cause him to be arrested on a criminal charge, unless he makes a bequest in favour of C. B, in consequence makes a bequest in favour of C. The bequest is void, the making of it having been caused by coercion.

(v) A, being of sufficient intellect, if undisturbed by the influence of others, to make a will yet being so much under the control of B that he is not a free agent, makes a will, dictated by B. It appears that he would not have executed the will but for fear of B. The will is invalid.

(vi) A, being in so feeble a state of health as to be unable to resist importunity, is pressed by B to make a will of a certain purport and does so merely to purchase peace and in submission to B. The will is invalid.

(vii) A being in such a state of health as to be capable of exercising his own judgment and volition, B uses urgent intercession and persuasion with him to induce him to make a will of a certain purport. A, in consequence of the intercession and persuasion, but in the free exercise of his judgment and volition, makes his will in the manner recommended by B. The will is not rendered invalid by the intercession and persuasion of B.

(viii) A, with a view to obtaining a legacy from B, pays him attention and flatters him and thereby produces in him a capricious partiality to A. B, in consequence of such attention and flattery makes his will, by which he leaves a legacy to A. The bequest is not rendered invalid by the attention and flattery of A.

62. A will is liable to be revoked or altered by Section 49.
 Will may be revoked or altered. the maker of it at any time when he is competent to dispose of his property by will. Act X of 1865.

CHAPTER III.

OF THE EXECUTION OF UNPRIVILEGED WILLS.

63. Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or a mariner at sea, shall execute his will according to the following rules :— Section 50, Act X of 1865.

- (a) The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.
- (b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.
- (c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person ; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

64. If a testator, in a will or codicil duly attested, refers to any other document then actually written as expressing any part of his intentions, such document shall be deemed to form a part of the will or codicil in which it is referred to. Section 51, Act X of 1865.

CHAPTER IV.

OF PRIVILEGED WILLS.

65. Any soldier being employed in an expedition or engaged in actual warfare, or any mariner being at sea, may, if he has completed the age of eighteen years, dispose of his property by a will made in the manner provided in section 66. Such wills are called privileged wills. Section 52, Act X of 1865.

Illustrations.

- (i) A, a medical officer attached to a regiment, is actually employed in an expedition. He is a soldier actually employed in an expedition, and can make a privileged will.
- (ii) A is at sea in a merchant-ship, of which he is the purser. He is a mariner, and, being at sea, can make a privileged will.
- (iii) A, a soldier serving in the field against insurgents, is a soldier engaged in actual warfare, and as such can make a privileged will.
- (iv) A, a mariner of a ship, in the course of a voyage, is temporarily on shore while she is lying in harbour. He is, for the purposes of this section, a mariner at sea, and can make a privileged will.
- (v) A, an admiral who commands a naval force, but who lives on shore, and only occasionally goes on board his ship, is not considered as at sea, and cannot make a privileged will.
- (vi) A, a mariner serving on a military expedition, but not being at sea, is considered as a soldier, and can make a privileged will.

(1) Privileged wills may be in writing, Section 53,
 Mode of making, and or may be made by word of mouth.
 rules for executing, privileged wills. Act X of 1865.

(2) The execution of privileged wills shall be governed by the following rules:—

- (a) The will may be written wholly by the testator, with his own hand. In such case it need not be signed or attested.
- (b) It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested.
- (c) If the instrument purporting to be a will is written wholly or in part by another person and is not signed by the testator, it shall be deemed to be his will, if it is shown that it was written by the testator's directions or that he recognised it as his will.
- (d) If it appears on the face of the instrument that the execution of it in the manner intended by the testator was not completed, the instrument shall not, by reason of that circumstance, be invalid, provided that his non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument.
- (e) If the soldier or mariner has written instructions for the preparation of his will, but has died before it could be prepared and executed, such instructions shall be considered to constitute his will.
- (f) If the soldier or mariner has, in the presence of two witnesses, given verbal instructions for the preparation of his will, and they have been reduced into writing in his lifetime, but he has died before the instrument could be prepared and executed, such instructions shall be considered to constitute his will, although they may not have been reduced into writing in his presence, nor read over to him.
- (g) The soldier or mariner may make a will by word of mouth by declaring his intentions before two witnesses present at the same time.
- (h) A will made by word of mouth shall be null at the expiration of one month after the testator, being still alive, has ceased to be entitled to make a privileged will.

CHAPTER V.

OF THE ATTESTATION, REVOCATION, ALTERATION AND REVIVAL OF WILLS.

67. A will shall not be deemed to be insufficiently attested by reason of any benefit thereby given either by way of bequest or by way of appointment to any person attesting it, or to his or her wife or husband; but the bequest

Effect of gift to attesting witness. Section 54, Act X of 1865.

or appointment shall be void so far as concerns the person so attesting, or the wife or husband of such person, or any person claiming under either of them.

Explanation.—A legatee under a will does not lose his legacy by attesting a codicil which confirms the will.

68. No person, by reason of interest in, or of his Section 55, Act X of 1865. being an executor of, a will, shall be disqualified as a witness to prove the execution of the will or to prove the validity or invalidity thereof.

Witness not disqualified by interest or by being executor.

69. Every will shall be revoked by the marriage Section 65, Act X of 1865. of the maker, except a will made in exercise of a power of appointment, when the property over which the power of appointment is exercised would not, in default of such appointment, pass to his or her executor or administrator, or to the person entitled in case of intestacy.

Explanation.—Where a man is invested with power to determine the disposition of property of which he is not the owner, he is said to have power to appoint such property.

70. No unprivileged will or codicil, nor any Section 57, Act X of 1865. part thereof, shall be revoked otherwise than by marriage, or by another will or codicil, or by some writing declaring an intention to revoke the same and executed in the manner in which an unprivileged will is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same.

Revocation of unprivileged will or codicil.

Illustrations.

(i) A has made an unprivileged will. Afterwards A makes another unprivileged will which purports to revoke the first. This is a revocation.

(ii) A has made an unprivileged will. Afterwards, A being entitled to make a privileged will, makes a privileged will, which purports to revoke his unprivileged will. This is a revocation.

71. No obliteration, interlineation or other Section 58, Act X of 1865. alteration made in any unprivileged will after the execution thereof shall have any effect, except so far as the words or meaning of the will have been thereby rendered illegible or undiscernible, unless such alteration has been executed in like manner as hereinbefore is required for the execution of the will:

Effect of obliteration, interlineation or alteration in unprivileged will.

Provided that the will, as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses is made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

72. A privileged will or codicil may be revoked Section 59, Act X of 1865. by the testator by an unprivileged will or codicil, or by any act expressing an intention to revoke it and accompanied by such formalities as would be sufficient to give validity to a privileged will, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Revocation of privileged will or codicil.

Explanation.—In order to the revocation of a privileged will or codicil by an act accompanied by such formalities as would be sufficient to give validity to a privileged will, it is not necessary that the testator should at the time of doing that act be in a situation which entitles him to make a privileged will.

73. (1) No unprivileged will or codicil, nor any part thereof, which has been revoked in any manner, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same. Section 60, Act X of 1865.

(2) When any will or codicil, which has been partly revoked and afterwards wholly revoked, is revived, such revival shall not extend to so much thereof as has been revoked before the revocation of the whole thereof, unless an intention to the contrary is shown by the will or codicil.

CHAPTER VI.

OF THE CONSTRUCTION OF WILLS.

74. It is not necessary that any technical words or terms of art be used in a will, but only that the wording be such that the intentions of the testator can be known therefrom. Section 61, Act X of 1865.

75. For the purpose of determining questions as to what person or what property is denoted by any words used in a will, a Court shall inquire into every material fact relating to the persons who claim to be interested under such will, the property which is claimed as the subject of disposition, the circumstances of the testator and of his family, and into every fact a knowledge of which may conduce to the right application of the words which the testator has used. Section 62, Act X of 1865.

Illustrations.

(i) A, by his will, bequeaths 1,000 rupees to his eldest son or to his youngest grandchild, or to his cousin, Mary. A Court may make inquiry in order to ascertain to what person the description in the will applies.

(ii) A, by his will, leaves to B "my estate called Black Acre". It may be necessary to take evidence in order to ascertain what is the subject-matter of the bequest; that is to say, what estate of the testator's is called Black Acre.

(iii) A, by his will, leaves to B "the estate which I purchased of C". It may be necessary to take evidence in order to ascertain what estate the testator purchased of C.

76. (1) Where the words used in a will to designate or describe a legatee or a class of legatees sufficiently show what is meant, an error in the name or description shall not prevent the legacy from taking effect. Section 63, Act X of 1865.

(2) A mistake in the name of a legatee may be corrected by a description of him, and a mistake in the description of a legatee may be corrected by the name.

Illustrations.

(i) A bequeaths a legacy to "Thomas, the second son of my brother John." The testator has an only brother named John, who has no son named Thomas, but has a second son whose name is William. William *will* have the legacy.

(ii) A bequeaths a legacy "to Thomas, the second son of my brother John." The testator has an only brother, named John, whose first son is named Thomas, and whose second son is named William. Thomas *will* have the legacy.

(iii) The testator bequeaths his property "to A and B, the legitimate children of C." C has no legitimate child, but has two illegitimate children, A and B. The bequest to A and B takes effect, although they are illegitimate.

(iv) The testator gives his residuary estate to be divided among "my seven children" and, proceeding to enumerate them, mentions six names only. This omission *will* not prevent the seventh child from taking a share with the others.

(v) The testator, having six grandchildren, makes a bequest to "my six grandchildren" and, proceeding to mention them by their Christian names, mentions one twice over omitting another altogether. The one whose name is not mentioned *will* take a share with the others.

(vi) The testator bequeaths "1,000 rupees to each of the three children of A." At the date of the will A has four children. Each of these four children *will*, if he survives the testator, receive a legacy of 1,000 rupees.

77. Where any word material to the full expression of the meaning has been omitted, it may be supplied by the context. Section 64,
Act X of
1865.

Illustration.

The testator gives a legacy of "five hundred" to his daughter A and a legacy of "five hundred rupees" to his daughter B. A *will* take a legacy of five hundred rupees.

78. If the thing which the testator intended to bequeath can be sufficiently identified from the description of it given in the will, but some parts of the description do not apply, such parts of the description shall be rejected as erroneous, and the bequest shall take effect. Section 65,
Act X of
1865.

Rejection of erroneous particulars in description of subject.

Illustrations.

(i) A bequeaths to B "my marsh-lands lying in L and in the occupation of X." The testator had marsh-lands lying in L but had no marsh-lands in the occupation of X. The words "in the occupation of X" shall be rejected as erroneous and the marsh-lands of the testator lying in L *will* pass by the bequest.

(ii) The testator bequeaths to A "my zamindari of Rampur." He had an estate at Rampur but it was a taluq and not a zamindari. The taluq passes by this bequest.

79. If a will mentions several circumstances as descriptive of the thing which the testator intends to bequeath, and there is any property of his in respect of which all those circumstances exist, the bequest shall be considered as limited to such property, and it shall not be lawful to reject any part of the description as erroneous, because the testator had other property to which such part of the description does not apply. Section 66,
Act X of
1865.

When part of description may not be rejected as erroneous.

Explanation.—In judging whether a case falls within the meaning of this section, any words which would be liable to rejection under section 78 shall be deemed to have been struck out of the will.

Illustrations.

(i) A bequeaths to B "my marsh-lands lying in L and in the occupation of X." The testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The bequest *will* be considered as limited to one of the testator's marsh-lands lying in L as were in the occupation of X.

(ii) A bequeaths to B "my marsh-lands lying in L and in the occupation of X, comprising 1,000 bighas of lands." The testator had marsh-lands lying in L, some of which were in the occupation of X and some not in the occupation of X. The measurement is wholly inapplicable to the marsh-lands of either class, or to the whole taken together. The measurement *will* be considered as struck out of the will, and each of the testator's marsh-lands lying in L as were in the occupation of X shall alone pass by the bequest.

80. Where the words of a will are unambiguous, Section 67, Act X of 1865. but it is found by extrinsic

Extrinsic evidence admissible in cases of patent ambiguity. Extrinsic evidence that they admit of applications, one only of which can have been intended by the testator. extrinsic evidence may be taken to show which of these applications was intended.

Illustrations.

(i) A man, having two cousins of the name of Mary, bequeaths a sum of money to "my cousin Mary." It appears that there are two persons, each answering the description in the will. That description, therefore, admits of two applications, only one of which can have been intended by the testator. Evidence is admissible to show which of the two applications was intended.

(ii) A, by his will, leaves to B "my estate called Sultanpur Khurd." It turns out that he had two estates called Sultanpur Khurd. Evidence is admissible to show which estate was intended.

81. Where there is an ambiguity or deficiency Section 68, Act X of 1865. on the face of a will, no

Extrinsic evidence inadmissible in case of patent ambiguity or deficiency. extrinsic evidence as to the intentions of the testator shall be admitted.

Illustrations.

(i) A man has an aunt, Caroline, and a cousin, Mary, and has no aunt of the name of Mary. By his will he bequeaths 1,000 rupees to "my aunt, Caroline" and 1,000 rupees to "my cousin, Mary" and afterwards bequeaths 2,000 rupees to "my before-mentioned aunt, Mary." There is no person to whom the description given in the will can apply, and evidence is not admissible to show who was meant by "my before-mentioned aunt, Mary." The bequest is therefore void for uncertainty under section 80.

(ii) A bequeaths 1,000 rupees to leaving a blank for the name of the legatee. Evidence is not admissible to show what name the testator intended to insert.

(iii) A bequeaths to B _____ rupees, or "my estate of _____." Evidence is not admissible to show what sum or what estate the testator intended to insert.

82. The meaning of any clause in a will is to Section 69, Act X of 1865. be collected from the entire instrument, and all its parts are to be construed with reference to each other.

Illustrations.

(i) The testator gives to B a specific fund or property at the death of A, and by a subsequent clause gives the whole of his property to A. The effect of the several clauses taken together is to vest the specific fund or property in A for life, and after his decease in B; it appearing from the bequest to B that the testator meant to use in a restricted sense the words in which he describes what he gives to A.

(ii) Where a testator having an estate, one part of which is called Black Acre, bequeaths the whole of his estate to A, and in another part of his will bequeaths Black Acre to B, the latter bequest is to be read as an exception out of the first as if he had said "I give Black Acre to B, and all the rest of my estate to A."

83. General words may be understood in a re-Section 70,

When words may be understood in restricted sense where it may be collected from the will that the testator meant to use them in a restricted sense; and words may be understood in a wider sense than that which they usually bear, where it may be collected from the other words of the will that the testator meant to use them in such wider sense.

Illustrations.

(i) A testator gives to A "my farm in the occupation of B," and to C "all my marsh-lands in L." Part of the farm in the occupation of B consists of marsh-lands in L, and the testator also has other marsh-lands in L. The general words, "all my marsh-lands in L," are restricted by the gift to A. A takes the whole of the farm in the occupation of B, including that portion of the farm which consists of marsh-lands in L.

(ii) The testator (a sailor on ship-board) bequeathed to his mother his gold ring, buttons and chest of clothes, and to his friend, A (a shipmate), his red box, clasp-knife and all things not before bequeathed. The testator's share in a house does not pass to A under this bequest.

(iii) A, by his will, bequeathed to B all his household furniture, plate, linen, china, books, pictures and all other goods of whatever kind; and afterwards bequeathed to B a specified part of his property. Under the first bequest, B is entitled only to such articles of the testator's as are of the same nature with the articles therein enumerated.

Where a clause is susceptible of two mean-Section 71,

Which of two possible constructions preferred. ings, according to one of which it has some effect, and according to the other of which it can have none, the former shall be preferred.

85. No part of a will shall be rejected as desti-Section 72,

No part rejected, if it can be reasonably construed. tute of meaning if it is possible to put a reasonable construction upon it.

86. If the same words occur in different parts of the same will, they shall be taken to have been used everywhere in the same sense, unless a contrary intention appears.

Interpretation of words repeated in different parts of will. of the same will, they shall be taken to have been used everywhere in the same sense, unless a contrary intention appears.

87. The intention of the testator shall not be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible.

Testator's intention to be effectuated as far as possible. set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible.

Illustration.

The testator by a will made on his death-bed bequeathed all his property to C D for life and after his decease to a certain hospital. The intention of the testator cannot take effect to its full extent, because the gift to the hospital is void under section 118, but it will take effect so far as regards the gift to C D.

88. Where two clauses or gifts in a will are irreconcilable, so that they cannot possibly stand together, the last shall prevail.

The last of two inconsistent clauses prevails. irreconcilable, so that they cannot possibly stand together, the last shall prevail.

Illustrations.

(i) The testator by the first clause of his will leaves his estate of Ramnagar "to A," and by the last clause of his will leaves it "to B and not to A." B will have it.

(ii) If a man at the commencement of his will gives his house to A, and at the close of it directs that his house shall be sold and the proceeds invested for the benefit of B, the latter disposition will prevail.

89. A will or bequest not expressive of any definite intention is void for uncertainty. Section 76.
Act X of 1865.

Illustration.

If a testator says "I bequeath goods to A," or "I bequeath to A," or "I leave to A all the goods mentioned in the Schedule" and no Schedule is found, or "I bequeath 'money,' 'wheat,' 'oil' " or the like, without saying how much, this is void.

90. The description contained in a will of Section 77, property, the subject of Act X of 1865.
Words describing subject refer to property answering description at testator's death. gift, shall, unless a contrary intention appears by the will, be deemed to refer to and comprise the property answering that description at the death of the testator.

91. Unless a contrary intention appears by the will, a bequest of the Section 78.
Act X of 1865.
Power of appointment executed by general bequest. estate of the testator shall be construed to include any property which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power; and a bequest of property described in a general manner shall be construed to include any property to which such description may extend, which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power.

92. Where property is bequeathed to or for the Section 79.
Act X of 1865.
benefit of certain objects as a specified person may appoint or for the benefit of certain objects in such proportions as a specified person may appoint, and the will does not provide for the event of no appointment being made; if the power given by the will is not exercised, the property belongs to all the objects of the power in equal shares.

Illustration.

A, by his will, bequeaths a fund to his wife, for her life, and directs that at her death it shall be divided among his children in such proportions as she shall appoint. The widow dies without having made any appointment. The fund will be divided equally among the children.

93. Where a bequest is made to the "heirs" or Section 80.
Act X of 1865.
"right heirs" or "relations" or "nearest relations" or "family" or "kindred" or "nearest of kin" or "next-of-kin" of a particular person without any qualifying terms, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it, leaving assets for the payment of his debts independently of such property.

Illustrations.

(i) A leaves his property "to my own nearest relations" The property goes to those who would be entitled to it if A had died intestate, leaving assets for the payment of his debts independently of such property.

(ii) A bequeaths 10,000 rupees "to B for his life, and, after the death of B, to my own right heirs". The legacy after B's death belongs to those who would be entitled to it if it had formed part of A's unbequeathed property.

(iii) A leaves his property to B; but if B dies before him, to B's next-of-kin; B dies before A; the property devolves as if it had belonged to B, and he had died intestate, leaving assets for the payment of his debts independently of such property.

(iv) A leaves 10,000 rupees "to B for his life, and after his decease to the heirs of C". The legacy goes as if it had belonged to C, and he had died intestate, leaving assets for the payment of his debts independently of the legacy.

94. Where a bequest is made to the "representatives" or "legal representatives," etc., of particular person, Section 81, Act X of 1865. or "executors or administrators" of a particular person, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person and he had died intestate in respect of it.

Illustration.

A bequest is made to the "legal representatives" of A. A has died intestate and insolvent. B is his administrator. B is entitled to receive the legacy, and will apply it in the first place to the discharge of such part of A's debts as may remain unpaid; if there be any surplus, B will pay it to those persons who at A's death would have been entitled to receive any property of A's which might remain after payment of his debts, or to the representatives of such persons.

95. Where property is bequeathed to any person, Section 82, Act X of 1865. without words of limitation, he is entitled to the whole interest of the testator therein, unless it appears from the will that only a restricted interest was intended for him.

96. Where property is bequeathed to a person Section 83, Act X of 1865. with a bequest in the alternative to another person or to a class of persons, then, if a contrary intention does not appear by the will, the legatee first named shall be entitled to the legacy if he is alive at the time when it takes effect; but if he is then dead, the person or class of persons named in the second branch of the alternative shall take the legacy.

Illustrations.

(i) A bequest is made to A or to B. A survives the testator. B takes nothing.

(ii) A bequest is made to A or to B. A dies after the date of the will, and before the testator. The legacy goes to B.

(iii) A bequest is made to A or to B. A is dead at the date of the will. The legacy goes to B.

(iv) Property is bequeathed to A or his heirs. A survives the testator. A takes the property absolutely.

(v) Property is bequeathed to A or his nearest of kin. A dies in the lifetime of the testator. Upon the death of the testator, the bequest to A's nearest of kin takes effect.

(vi) Property is bequeathed to A for life, and after his death to B or his heirs. A and B survive the testator. B dies in A's lifetime. Upon A's death the bequest to the heirs of B takes effect.

(vii) Property is bequeathed to A for life, and after his death to B or his heirs. B dies in the testator's lifetime. A survives the testator. Upon A's death the bequest to the heirs of B takes effect.

97. Where property is bequeathed to a person, and words are added which describe a class of persons but do not denote them as direct objects of a distinct and independent gift, such person is entitled to the whole interest of the testator therein, unless a contrary intention appears by the will.

Illustrations.

(i) A bequest is made—

to A and his children,
to A and his children by his present wife,
to A and his heirs,
to A and the heirs of his body,
to A and the heirs male of his body,
to A and the heirs female of his body,
to A and his issue,
to A and his family,
to A and his descendants,
to A and his representatives,
to A and his personal representatives,
to A, his executors and administrators.

In each of these cases, A takes the whole interest which the testator had in the property.

(ii) A bequest is made to A and his brothers. A and his brothers are jointly entitled to the legacy.

(iii) A bequest is made to A for life and after his death to his issue. At the death of A the property belongs in equal shares to all persons who then answer the description of issue of A.

98. Where a bequest is made to a class of persons under a general description only, no one to whom the words of the description are not in their ordinary sense applicable shall take the legacy.

99. In a will—

Construction of terms.

(a) the word “children” applies only to lineal descendants in the first degree of the person whose “children” are spoken of; Section 85,
Act X of
1865.

(b) the word “grandchildren” applies only to lineal descendants in the second degree of the person whose “grandchildren” are spoken of;

(c) the words “nephews” and “nieces” apply only to children of brothers or sisters;

(d) the words “cousins,” or “first cousins,” or “cousins-german,” apply only to children of brothers or of sisters of the father or mother of the person whose “cousins,” or “first cousins,” or “cousins-german,” are spoken of;

(e) the words “first cousins once removed” apply only to children of cousins-german, or to cousins-german of a parent of the person whose “first cousins once removed” are spoken of;

(f) the words “second cousins” apply only to grandchildren of brothers or of sisters of the grandfather or grandmother of the person whose “second cousins” are spoken of;

(g) the words “issue” and “descendants” apply to all lineal descendants whatever of the person whose “issue” or “descendants” are spoken of;

(h) words expressive of collateral relationship apply alike to relatives of full and of half blood; and

(1) all words expressive of relationship apply to a child in the womb who is afterwards born alive.

100. In the absence of any intimation to the contrary in a will, the word "child," the word "son," the word "daughter," or any word which expresses relationship, is to be understood as denoting only a legitimate relative, or, where there is no such legitimate relative, a person who has acquired, at the date of the will, the reputation of being such relative.

Section 6
Act X of
1865.

Words expressing relationship denote only legitimate relatives or failing such relatives reputed legitimate.

word "child," the word "son," the word "daughter," or any word which expresses relationship, is to be understood as denoting only a legitimate relative, or, where there is no such legitimate relative, a person who has acquired, at the date of the will, the reputation of being such relative.

denoting only a legitimate relative, or, where there is no such legitimate relative, a person who has acquired, at the date of the will, the reputation of being such relative.

Illustrations.

(i) A having three children, B, C and D, of whom B and C are legitimate and D is illegitimate, leaves his property to be equally divided among "my children." The property belongs to B and C in equal shares, to the exclusion of D.

(ii) A, having a niece of illegitimate birth, who has acquired the reputation of being his niece, and having no legitimate niece, bequeaths a sum of money to his niece. The illegitimate niece is entitled to the legacy.

(iii) A, having in his will enumerated his children, and named as one of them B, who is illegitimate, leaves a legacy to "my said children." B will take a share in the legacy along with the legitimate children.

(iv) A leaves a legacy to "the children of B." B is dead and has left none but illegitimate children. All those who had at the date of the will acquired the reputation of being the children of B are objects of the gift.

(v) A bequeaths a legacy to "the children of B." B never had any legitimate child. C and D had, at the date of the will, acquired the reputation of being children of B. After the date of the will and before the death of the testator, E and F were born, and acquired the reputation of being children of B. Only C and D are objects of the bequest.

(vi) A makes a bequest in favour of his child by a certain woman, not his wife. B had acquired at the date of the will the reputation of being the child of A by the woman designated. B takes the legacy.

(vii) A makes a bequest in favour of his child to be born of a woman who never becomes his wife. The bequest is void.

(viii) A makes a bequest in favour of the child of which a certain woman, not married to him, is pregnant. The bequest is valid.

101. Where a will purports to make two bequests to the same person, and a question arises whether the testator intended to make the second bequest instead of or in addition to the first; if there is nothing in the will to show what he intended, the following rules shall have effect in determining the construction to be put upon the will:—

Section
Act X of
1865.

Rules of construction where will purports to make two bequests to same person.

and a question arises whether the testator intended to make the second bequest instead of or in addition to the first; if there is nothing in the will to show what he intended, the following rules shall have effect in determining the construction to be put upon the will:—

to show what he intended, the following rules shall have effect in determining the construction to be put upon the will:—

(a) If the same specific thing is bequeathed twice to the same legatee in the same will or in the will and again in the codicil, he is entitled to receive that specific thing only.

(b) Where one and the same will or one and the same codicil purports to make, in two places, a bequest to the same person of the same quantity or amount of anything, he shall be entitled to one such legacy only.

(c) Where two legacies of unequal amount are given to the same person in the same will, or in the same codicil, the legatee is entitled to both.

(d) Where two legacies, whether equal or unequal in amount, are given to the same legatee, one by a will and the other by a codicil, or each by

a different codicil, the legatee is entitled to both legacies.

Explanation.—In clauses (a) to (d) of this section, the word “will” does not include a codicil.

Illustrations.

(i) A, having ten shares, and no more, in the Imperial Bank of India, made his will, which contains near its commencement the words “I bequeath my ten shares in the Imperial Bank of India to B.” After other bequests, the will concludes with the words “and I bequeath my ten shares in the Imperial Bank of India to B.” B is entitled simply to receive A’s ten shares in the Imperial Bank of India.

(ii) A, having one diamond ring, which was given him by B, bequeaths to C the diamond ring which was given by B. A afterwards made a codicil to his will, and thereby, after giving other legacies, he bequeathed to C the diamond ring which was given him by B. C can claim nothing except the diamond ring which was given to A by B.

(iii) A, by his will, bequeaths to B the sum of 5,000 rupees and afterwards in the same will repeats the bequest in the same words. B is entitled to one legacy of 5,000 rupees only.

(iv) A, by his will, bequeaths to B the sum of 5,000 rupees and afterwards in the same will bequeaths to B the sum of 6,000 rupees. B is entitled to receive 11,000 rupees.

(v) A, by his will, bequeaths to B 5,000 rupees and by a codicil to the will he bequeaths to him 5,000 rupees. B is entitled to receive 10,000 rupees.

(vi) A, by one codicil to his will, bequeaths to B 5,000 rupees and by another codicil bequeaths to him 6,000 rupees. B is entitled to receive 11,000 rupees.

(vii) A, by his will, bequeaths “500 rupees to B because she was my nurse,” and in another part of the will bequeaths 500 rupees to B “because she went to England with my children.” B is entitled to receive 1,000 rupees.

(viii) A, by his will, bequeaths to B the sum of 5,000 rupees and also, in another part of the will, an annuity of 400 rupees. B is entitled to both legacies.

(ix) A, by his will, bequeaths to B the sum of 5,000 rupees and also bequeaths to him the sum of 5,000 rupees if he shall attain the age of 18. B is entitled absolutely to one sum of 5,000 rupees, and takes a contingent interest in another sum of 5,000 rupees.

102. A residuary legatee may be constituted by Section 98, any words that show an ^{Act X of 1865.} intention on the part of the testator that the person designated shall take the surplus or residue of his property.

Illustrations.

(i) A makes her will, consisting of several testamentary papers, in one of which are contained the following words:—“I think there will be something left, after all funeral expenses, etc., to give to B, now at school, towards equipping him to any profession he may hereafter be appointed to.” B is constituted residuary legatee.

(ii) A makes his will, with the following passage at the end of it:—“I believe there will be found sufficient in my banker’s hands to defray and discharge my debts, which I hereby desire B to do, and keep the residue for her own use and pleasure.” B is constituted the residuary legatee.

(iii) A bequeaths all his property to B, except certain stocks and funds, which he bequeaths to C. B is the residuary legatee.

103. Under a residuary bequest, the legatee is ^{Section 90, Act X of 1865.} entitled to all property belonging to the testator at the time of his death, of which he has not made any other testamentary disposition which is capable of taking effect.

Illustration.

A by his will bequeaths certain legacies, of which one is void under section 118, and another lapses by the death of the legatee. He bequeaths the residue of his property to B. After the date of his will A purchases a zamindari, which belongs to him at the time of his death. B is entitled to the two legacies and the zamindari as part of the residue.

104. If a legacy is given in general terms, ^{Section 91, Act X of 1865.} without specifying the time when it is to be paid, the legatee has a vested interest in it from the day of the death of the testator, and, if he dies without having received it, it shall pass to his representatives.

105. (1) If the legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form part of the residue of the testator's property, unless it appears by the will that the testator intended that it should go to some other person. ^{Section 92, Act X of 1865.}

(2) In order to entitle the representatives of the legatee to receive the legacy, it must be proved that he survived the testator.

Illustrations.

(i) The testator bequeaths to B "500 rupees which B owes me". B dies before the testator; the legacy lapses.

(ii) A bequest is made to A and his children. A dies before the testator, or happens to be dead when the will is made. The legacy to A and his children lapses.

(iii) A legacy is given to A, and, in case of his dying before the testator, to B. A dies before the testator. The legacy goes to B.

(iv) A sum of money is bequeathed to A for life, and after his death to B. A dies in the lifetime of the testator; B survives the testator. The bequest to B takes effect.

(v) A sum of money is bequeathed to A on his completing his eighteenth year, and in case he should die before he completes his eighteenth year, to B. A completes his eighteenth year, and dies in the lifetime of the testator. The legacy to A lapses, and the bequest to B does not take effect.

(vi) The testator and the legatee perished in the same shipwreck. There is no evidence to show which died first. The legacy lapses.

106. If a legacy is given to two persons jointly, ^{Section 93, Act X of 1865.} and one of them dies before the testator, the other legatee takes the whole.

Illustration.

The legacy is simply to A and B. A dies before the testator. B takes the legacy.

107. If a legacy is given to legatees in words which show that the testator intended to give them distinct shares of it, ^{Section 94, Act X of 1865.} then, if any legatee dies before the testator, so much of the legacy as was intended for him shall fall into the residue of the testator's property.

Illustration.

A sum of money is bequeathed to A, B and C, to be equally divided among them. A dies before the testator. B and C will only take so much as they would have had if A had survived the testator.

108. Where a share which lapses is a part of the general residue bequeathed by the will, that share shall go as undisposed of. ^{Section 95, Act X of 1865.}

Illustration.

The testator bequeaths the residue of his estate to A, B and C, to be equally divided between them. A dies before the testator. His one-third of the residue goes as undisposed of.

109. Where a bequest has been made to any child or other lineal descendant of the testator, and the legatee dies in the lifetime of the testator, but any lineal descendant of his survives the testator, the bequest shall not lapse, but shall take effect as if the death of the legatee had happened immediately after the death of the testator, unless a contrary intention appears by the will.

Illustration.

A makes his will, by which he bequeaths a sum of money to his son, B, for his own absolute use and benefit. B dies before A, leaving a son, C, who survives A, and having made his will whereby he bequeaths all his property to his widow, D. The money goes to D.

110. Where a bequest is made to one person for the benefit of another, the legacy does not lapse by the death, in the testator's lifetime, of the person to whom the bequest is made.

111. Where a bequest is made simply to a described class of persons, the thing bequeathed shall go only to such as are alive at the testator's death.

Exception.—If property is bequeathed to a class of persons described as standing in a particular degree of kindred to a specified individual, but their possession of it is deferred until a time later than the death of the testator by reason of a prior bequest or otherwise, the property shall at that time go to such of them as are then alive, and to the representatives of any of them who have died since the death of the testator.

Illustrations.

(i) A bequeaths 1,000 rupees to "the children of B" without saying when it is to be distributed among them. B had died previous to the date of the will, leaving three children, C, D and E. E died after the date of the will, but before the death of A. C and D survive A. The legacy will belong to C and D, to the exclusion of the representatives of E.

(ii) A lease for years of a house was bequeathed to A for his life, and after his decease to the children of E. At the death of the testator, B had two children living, C and D, and he never had any other child. Afterwards, during the lifetime of A, C died, leaving E, his executor. D has survived A. D and E are jointly entitled to so much of the lease-hold term as remains unexpired.

(iii) A sum of money was bequeathed to A for her life, and after her decease, to the children of B. At the death of the testator, B had two children living, C and D, and, after that event, two children, E and F, were born to B. C and E died in the lifetime of A, C having made a will, E having made no will. A has died, leaving D and F surviving her. The legacy is to be divided into four equal parts, one of which is to be paid to the executor of C, one to D, one to the administrator of E and one to F.

(iv) A bequeaths one-third of his lands to B for his life, and after his decease to the sisters of B. At the death of the testator, B had two sisters living, C and D, and after that event another sister E was born. C died during the life of B,

D and E have survived B. One-third of A's lands belong to D, E and the representatives of C, in equal shares.

(v) A bequeaths 1,000 rupees to B for life and after his death equally among the children of C. Up to the death of B, C had not had any child. The bequest after the death of B is void.

(v) A bequeaths 1,000 rupees to "all the children born or to be born" of B to be divided among them at the death of C. At the death of the testator, B has two children living, D and E. After the death of the testator, but in the lifetime of C, two other children, F and G, are born to B. After the death of C, another child is born to B. The legacy belongs to D, E, F and G, to the exclusion of the after-born child of B.

(v i) A bequeaths a fund to the children of B, to be divided among them when the eldest shall attain majority. At the testator's death, B had one child living, named C. He afterwards had two other children, named D and E. E died, but C and D were living when C attained majority. The fund belongs to C, D and the representatives of E, to the exclusion of any child who may be born to B after C's attaining majority.

CHAPTER VII.

OF VOID BEQUESTS.

112. Where a bequest is made to a person by Section 92, Act X of 1865. a particular description, and there is no person in existence at the testator's death who answers the description, the bequest is void.

Exception.—If property is bequeathed to a person described as standing in a particular degree of kindred to a specified individual, but his possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest or otherwise; and if a person answering the description is alive at the death of the testator, or comes into existence between that event and such later time, the property shall, at such later time, go to that person, or, if he is dead, to his representatives.

Illustrations.

(i) A bequeaths 1,000 rupees to the eldest son of B. At the death of the testator, B has no son. The bequest is void.

(ii) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son of C. At the death of the testator, C had no son. Afterwards, during the life of B, a son is born to C. Upon B's death the legacy goes to C's son.

(iii) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son of C. At the death of the testator, C had no son. Afterwards, during the life of B, a son, named D, is born to C. D dies, then B dies. The legacy goes to the representative of D.

(iv) A bequeaths his estate of Green Acre to B for life, and at his decease, to the eldest son of C. Up to the death of B, C has had no son. The bequest to C's eldest son is void.

(v) A bequeaths 1,000 rupees to the eldest son of C, to be paid to him after the death of B. At the death of the testator C has no son, but a son is afterwards born to him during the life of B and is alive at B's death. C's son is entitled to the 1,000 rupees.

113. Where a bequest is made to a person not Section 100, Act X of 1865. in existence at the time of the testator's death, subject to a prior bequest contained in the will, the later bequest shall be void, unless it comprises the whole of the remaining interest of the testator in the thing bequeathed.

Illustrations.

(i) Property is bequeathed to A for his life, and after his death to his eldest son for life and after the death of the latter to his eldest son. At the time of the testator's death, A has no son. Here the bequest to A's eldest son is a bequest to a person not in existence at the testator's death. It is not a bequest of the whole interest that remains to the testator. The bequest to A's eldest son for his life is void.

(ii) A fund is bequeathed to A for his life, and after his death to his daughters. A survives the testator. A has daughters some of whom were not in existence at the testator's death. The bequest to A's daughters comprises the whole interest that remains to the testator in the thing bequeathed. The bequest to A's daughters is valid.

(iii) A fund is bequeathed to A for his life, and after his death to his daughters, with a direction that, if any of them marries under the age of eighteen, her portion shall be settled so that it may belong to herself for life and may be divisible among her children after her death. A has no daughters living at the time of the testator's death, but has daughters born afterwards who survive him. Here the direction for a settlement has the effect in the case of each daughter who marries under eighteen of substituting for the absolute bequest to her a bequest to her merely for her life; that is to say, a bequest to a person not in existence at the time of the testator's death of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund is void.

(iv) A bequeaths a sum of money to B for life, and directs that upon the death of B the fund shall be settled upon his daughters, so that the portion of each daughter may belong to herself for life, and may be divided among her children after her death. B has no daughter living at the time of the testator's death. In this case the only bequest to the daughters of B is contained in the direction to settle the fund, and this direction amounts to a bequest to persons not yet born, of a life-interest in the fund, that is to say, of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund upon the daughters of B is void.

114. No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's death and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing bequeathed is to belong.

Section 101,
Act X of
1865.

Rule against perpetuity.

Illustrations.

(i) A fund is bequeathed to A for his life and after his death to B for his life; and after B's death to such of the sons of B as shall first attain the age of 25. A and B survive the testator. Here the son of B who shall first attain the age of 25 may be a son born after the death of the testator; such son may not attain 25 until more than 18 years have elapsed from the death of the longer liver of A and B; and the vesting of the fund may thus be delayed beyond the lifetime of A and B and the minority of the sons of B. The bequest after B's death is void.

(ii) A fund is bequeathed to A for his life, and after his death to B for his life, and after B's death to such of B's sons as shall first attain the age of 25. B dies in the lifetime of the testator, leaving one or more sons. In this case the sons of B are persons living at the time of the testator's decease, and the time when either of them will attain 25 necessarily falls within his own lifetime. The bequest is valid.

(iii) A fund is bequeathed to A for his life, and after his death to B for his life, with a direction that after B's death it shall be divided amongst such of B's children as shall attain the age of 18, but that, if no child of B shall attain that age, the fund shall go to C. Here the time for the division of the fund must arrive at the latest at the expiration of 18 years from the death of B, a person living at the testator's decease. All the bequests are valid.

(iv) A fund is bequeathed to trustees for the benefit of the testator's daughters, with a direction that, if any of them marry under age, her share of the fund shall be settled so as to devolve after her death upon such of her children as shall attain the age of 18. Any daughter of the testator to whom the direction applies must be in existence at his decease, and any portion of the fund which may eventually be settled as directed must vest not later than 18 years from the death of the daughters whose share it was. All these provisions are valid.

115. If a bequest is made to a class of persons with regard to some of whom it is inoperative by reason of the provisions of section 113 or section 114, such bequest shall be wholly void.

Section 102,
Act X of
1865.

Bequest to a class some of whom may come under rules in sections 113 and 114.

Illustrations.

(i) A fund is bequeathed to A for life, and after his death to all his children who shall attain the age of 25. A survives the testator, and has some children living at the testator's death. Each child of A's living at the testator's death must attain the age of 25 (if at all) within the limits allowed for a bequest. But A may have children after the testator's decease, some of whom may not attain the age of 25 until more than 18 years have elapsed after the decease of A. The bequest to A's children, therefore, is inoperative as to any child born after the testator's death; and, as it is given to all his children as a class it is not good as to any division of that class, but is wholly void.

(ii) A fund is bequeathed to A for his life, and after his death to B, C, D and all other children of A who shall attain the age of 25. B, C, D are children of A living at the testator's decease. In all other respects the case is the same as that supposed in *Illustration* (i). The mention of B, C, and D by name does not prevent the bequest from being regarded as a bequest to a class, and the bequest is wholly void.

116. Where a bequest is void by reason of any Section 103, of the provisions of section Act X of 1865.

Bequest to take effect on failure of bequest void under section 113, 114 or 115. 113, section 114, or section 115, any bequest contained in the same will, and intended to take effect after or upon failure of such prior bequest, is also void.

Illustrations.

(i) A fund is bequeathed to A for his life, and after his death to such of his sons as shall first attain the age of 25, for his life, and after the decease of such son to B. A and B survive the testator. The bequest to B is intended to take effect after the bequest to such of the sons of A as shall first attain the age of 25, which bequest is void under section 114. The bequest to B is void.

(ii) A fund is bequeathed to A for his life, and after his death to such of his sons as shall first attain the age of 25, and, if no son of A shall attain that age, to B. A and B survive the testator. The bequest to B is intended to take effect upon failure of the bequest to such of A's sons as shall first attain the age of 25, which bequest is void under section 114. The bequest to B is void.

117. A direction to accumulate the income Section 104, arising from any property Act X of 1865.

Effect of direction for accumulation. shall be void; and the property shall be disposed of as if no accumulation had been directed.

Exception.—Where the property is immoveable, or where accumulation is directed to be made from the death of the testator, the direction shall be valid in respect only of the income arising from the property within one year next following the testator's death: and at the end of the year such property and income shall be disposed of respectively, as if the period during which the accumulation has been directed to be made had elapsed.

Illustrations.

(i) The will directs that the sum of 10,000 rupees shall be invested in Government securities, and the income accumulated for 20 years, and that the principal, together with the accumulations, shall then be divided between A, B and C. A, B and C are entitled to receive the sum of 10,000 rupees at the end of a year from the testator's death.

(ii) The will directs that 10,000 rupees shall be invested, and the income accumulated until A shall marry, and shall then be paid to him. A is entitled to receive 10,000 rupees at the end of a year from the testator's death.

(iii) The will directs that the rents of the farm of Sultanpur shall be accumulated for ten years, and that the accumulation shall be then paid to the eldest son of A. At the death of the testator, A has an eldest son living, named B. B will receive, at the end of one year from the testator's death, the rents which have accrued during the year, together with any interest which may have been made by investing them.

(c) The will directs that the rents of the farm of Sultanpur shall be accumulated for ten years, and that the accumulation shall then be paid to the eldest son of A. At the death of the testator, A has no son. The bequest is *void*.

(d) A bequeaths a sum of money to B, to be paid to him when he shall attain the age of 18, and directs the interest to be accumulated till he shall arrive at that age. At A's death the legacy becomes vested in B; and so much of the interest as is not required for his maintenance and education is accumulated, not by reason of the direction contained in the will, but in consequence of B's minority.

118. No man having a nephew or niece or any nearer relative shall have Section 105, Act X of 1865.

Bequest to religious or charitable uses. power to bequeath any property to religious or charitable uses, except by a will executed not less than twelve months before his death, and deposited within six months from its execution in some place provided by law for the safe custody of the wills of living persons.

Illustrations.

A having a nephew makes a bequest by a will not executed and deposited as required—

- for the relief of poor people ;
- for the maintenance of sick soldiers ;
- for the erection or support of a hospital ;
- for the education and preferment of orphans ;
- for the support of scholars ;
- for the erection or support of a school ;
- for the building and repairs of a bridge ;
- for the making of roads ;
- for the erection or support of a church ?
- for the repairs of a church ;
- for the benefit of ministers of religion ;
- for the formation or support of a public garden ;

All these bequests are void.

CHAPTER VIII.

OF THE VESTING OF LEGACIES.

119. Where by the terms of a bequest the legatee is not entitled to Section 106, Act X of 1865. immediate possession of the thing bequeathed, a right to receive it at the proper time shall, unless a contrary intention appears by the will, become vested in the legatee on the testator's death, and shall pass to the legatee's representatives if he dies before that time and without having received the legacy, and in such cases the legacy is from the testator's death said to be vested in interest.

Explanation.—An intention that a legacy to any person shall not become vested in interest in him is not to be inferred merely from a provision whereby the payment or possession of the thing bequeathed is postponed, or whereby a prior interest therein is bequeathed to some other person, or whereby the income arising from the fund bequeathed is directed to be accumulated until the time of payment arrives, or from a provision that, if a particular event shall happen, the legacy shall go over to another person.

Illustrations.

(i) A bequeaths to B 100 rupees, to be paid to him at the death of C. On A's death the legacy becomes vested in interest in B, and if he dies before C, his representatives are entitled to the legacy.

(ii) A bequeaths to B 100 rupees, to be paid to him upon his attaining the age of 18. On A's death the legacy becomes vested in interest in B.

(iii) A fund is bequeathed to A for life, and after his death to B. On the testator's death the legacy to B becomes vested in interest in B.

(iv) A fund is bequeathed to A until B attains the age of 18 and then to B. The legacy to B is vested in interest from the testator's death.

(v) A bequeaths the whole of his property to B upon trust to pay certain debts out of the income, and then to make over the fund to C. At A's death the gift to C becomes vested in interest in him.

(vi) A fund is bequeathed to A, B and C in equal shares to be paid to them on their attaining the age of 18, respectively, with a proviso that, if all of them die under the age of 18, the legacy shall devolve upon D. On the death of the testator, the shares vested in interest in A, B and C, subject to be divested in case A, B and C shall all die under 18, and, upon the death of any of them (except the last survivor) under the age of 18, his vested interest passes, so subject, to his representatives.

120. (1) A legacy bequeathed in case a specified Section 107,

Date of vesting when uncertain event shall happen ^{Act X of 1865.}
 legacy contingent upon event does not vest until
 specified uncertain event that event happens.

(2) A legacy bequeathed in case a specified uncertain event shall not happen does not vest until the happening of that event becomes impossible.

(3) In either case, until the condition has been fulfilled, the interest of the legatee is called contingent.

Exception.—Where a fund is bequeathed to any person upon his attaining a particular age, and the will also gives to him absolutely the income to arise from the fund before he reaches that age, or directs the income, or so much of it as may be necessary, to be applied for his benefit, the bequest of the fund is not contingent.

Illustrations.

(i) A legacy is bequeathed to D in case A, B and C shall all die under the age of 18. D has a contingent interest in the legacy until A, B and C all die under 18, or one of them attains that age.

(ii) A sum of money is bequeathed to A "in case he shall attain the age of 18," or "when he shall attain the age of 18." A's interest in the legacy is contingent until the condition is fulfilled by his attaining that age.

(iii) An estate is bequeathed to A for life, and after his death to B if B shall then be living; but if B shall not be then living to C. A, B and C survive the testator. B and C each take a contingent interest in the estate until the event which is to vest it in one or in the other has happened.

(iv) An estate is bequeathed as in the case last supposed. B dies in the lifetime of A and C. Upon the death of B, C acquires a vested right to obtain possession of the estate upon A's death.

(v) A legacy is bequeathed to A when she shall attain the age of 18, or shall marry under that age with the consent of B, with a proviso that, if she neither attains 18 nor marries under that age with B's consent, the legacy shall go to C. A and C each take a contingent interest in the legacy. A attains the age of 18. A becomes absolutely entitled to the legacy although she may have married under 18 without the consent of B.

(vi) An estate is bequeathed to A until he shall marry and after that event to B. B's interest in the bequest is contingent until the condition is fulfilled by A's marrying.

(vii) An estate is bequeathed to A until he shall take advantage of any law for the relief of insolvent debtors, and after that event to B. B's interest in the bequest is contingent until A takes advantage of such a law.

(viii) An estate is bequeathed to A if he shall pay 500 rupees to B. A's interest in the bequest is contingent until he has paid 500 rupees to B.

(ix) A leaves his farm of Sultanpur Khurd to B, if B shall convey his own farm of Sultanpur Buzurg to C. B's interest in the bequest is contingent until he has conveyed the latter farm to C.

(x) A fund is bequeathed to A if B shall not marry C within five years after the testator's death. A's interest in the legacy is contingent until the condition is fulfilled by the expiration of the five years without B's having married C, or by the occurrence within that period of an event which makes the fulfilment of the condition impossible.

(xi) A fund is bequeathed to A if B shall not make any provision for him by will. The legacy is contingent until B's death.

(xii) A bequeaths to B 500 rupees a year upon his attaining the age of 18, and directs that the interest, or a competent part thereof, shall be applied for his benefit until he reaches that age. The legacy is vested.

(xiii) A bequeaths to B 500 rupees when he shall attain the age of 18, and directs that a certain sum, out of another fund, shall be applied for his maintenance until he arrives at that age. The legacy is contingent.

121. Where a bequest is made only to such members of a class as shall have attained a particular age, a person who has not attained that age cannot have a vested interest in the legacy. Section 103, Act X of 1865.

Vesting of interest in bequest to such members of a class as shall have attained particular age.

Illustration.

A fund is bequeathed to such of the children of A as shall attain the age of 18, with a direction that, while any child of A shall be under the age of 18, the income of the share, to which it may be presumed he will be eventually entitled, shall be applied for his maintenance and education. No child of A who is under the age of 18 has a vested interest in the bequest.

CHAPTER IX.

OF ONEROUS BEQUESTS.

122. Where a bequest imposes an obligation on the legatee, he can take nothing by it unless he accepts it fully. Section 109, Act X of 1865.

Onerous bequests.

Illustration.

A, having shares in (X), a prosperous joint stock company, and also shares in (Y), a joint stock company in difficulties, in respect of which shares heavy calls are expected to be made, bequeaths to B all his shares in joint stock companies; B refuses to accept the shares in (Y). He forfeits the shares in (X).

123. Where a will contains two separate and independent bequests to the same person, the legatee is at liberty to accept one of them and refuse the other, although the former may be beneficial and the latter onerous. Section 110, Act X of 1865.

One of two separate and independent bequests to same person may be accepted, and other refused.

Illustration.

A, having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is higher than the house can be let for, bequeaths to B the lease and a sum of money. B refuses to accept the lease. He will not by this refusal forfeit the money.

CHAPTER X.

OF CONTINGENT BEQUESTS.

124. Where a legacy is given if a specified uncertain event shall happen and no time is mentioned in the will for the occurrence of that event, the legacy cannot take effect, unless such event happens before the period when the fund bequeathed is payable or distributable. Section 111, Act X of 1865.

Bequest contingent upon specified uncertain event, no time being mentioned for its occurrence.

Illustrations.

(i) A legacy is bequeathed to A, and, in case of his death, to B. If A survives the testator, the legacy to B does not take effect.

(ii) A legacy is bequeathed to A, and, in case of his death without children, to B. If A survives the testator or dies in his lifetime leaving a child, the legacy to B does not take effect.

(iii) A legacy is bequeathed to A when and if he attains the age of 18, and, in case of his death, to B. A attains the age of 18. The legacy to B does not take effect.

(iv) A legacy is bequeathed to A for life, and, after his death, to B, and, "in case of B's death without children," to C. The words "in case of B's death without children" are to be understood as meaning in case B dies without children during the lifetime of A.

(v) A legacy is bequeathed to A for life, and, after his death to B, and, "in case of B's death," to C. The words "in case of B's death" are to be considered as meaning "in case B dies in the lifetime of A."

125. Where a bequest is made to such of certain persons as shall be surviving at some period, but the exact period is not specified, the legacy shall go to such of them as are alive at the time of payment or distribution, unless a contrary intention appears by the will. Section 112, Act X of 1865.

Bequest to such of certain persons as shall be surviving at some period, but the exact period is not specified, the legacy shall go to such of them as are alive at the time of payment or distribution, unless a contrary intention appears by the will.

Illustrations.

(i) Property is bequeathed to A and B to be equally divided between them, or to the survivor of them. If both A and B survive the testator, the legacy is equally divided between them. If A dies before the testator, and B survives the testator, it goes to B.

(ii) Property is bequeathed to A for life, and, after his death, to B and C, to be equally divided between them, or to the survivor of them. B dies during the life of A; C survives A. At A's death the legacy goes to C.

(iii) Property is bequeathed to A for life, and after his death to B and C, or the survivor, with a direction that, if B should not survive the testator, his children are to stand in his place. C dies during the life of the testator; B survives the testator, but dies in the lifetime of A. The legacy goes to the representative of B.

(iv) Property is bequeathed to A for life, and, after his death, to B and C, with a direction that, in case either of them dies in the lifetime of A, the whole shall go to the survivor. B dies in the lifetime of A. Afterwards C dies in the lifetime of A. The legacy goes to the representative of C.

CHAPTER XI.

OF CONDITIONAL BEQUESTS.

126. A bequest upon an impossible condition is void. Section 113, Act X of 1865.

Illustrations.

(i) An estate is bequeathed to A on condition that he shall walk 100 miles in an hour. The bequest is void.

(ii) A bequeaths 500 rupees to B on condition that he shall marry A's daughter. A's daughter was dead at the date of the will. The bequest is void.

127. A bequest upon a condition, the fulfilment of which would be contrary to law or to morality, is void. Section 114, Act X of 1865.

Bequest upon illegal or immoral condition.

Illustrations.

(i) A bequeaths 500 rupees to B on condition that he shall murder C. The bequest is void.

(ii) A bequeaths 5,000 rupees to his niece if she will desert her husband. The bequest is void.

128. Where a will imposes a condition to be fulfilled before the legatee can take a vested interest in the thing bequeathed, the condition shall be considered to have been fulfilled if it has been substantially complied with.

Section 115,
Act X of
1865.

Illustrations.

(i) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, D and E. A marries with the written consent of B. C is present at the marriage. D sends a present to A previous to the marriage. E has been personally informed by A of his intentions, and has made no objection. A has fulfilled the condition.

(ii) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. D dies. A marries with the consent of B and C. A has fulfilled the condition.

(iii) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries in the lifetime of B, C and D, with the consent of B and C only. A has not fulfilled the condition.

(iv) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A obtains the unconditional assent of B, C and D to his marriage with E. Afterwards B, C and D capriciously retract their consent. A marries E. A has fulfilled the condition.

(v) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries without the consent of B, C and D, but obtains their consent after the marriage. A has not fulfilled the condition.

(vi) A makes his will whereby he bequeaths a sum of money to B if B shall marry with the consent of A's executors. B marries during the lifetime of A, and A afterwards expresses his approbation of the marriage. A dies. The bequest to B takes effect.

(vii) A legacy is bequeathed to A if he executes a certain document within a time specified in the will. The document is executed by A within a reasonable time, but not within the time specified in the will. A has not performed the condition, and is not entitled to receive the legacy.

129. Where there is a bequest to one person and a bequest of the same thing to another, if the prior bequest shall fail, the second bequest shall take effect upon the failure of the prior bequest although the failure may not have occurred in the manner contemplated by the testator.

Section 116,
Act X of
1865.

Illustrations.

(i) A bequeaths a sum of money to his own children surviving him, and, if they all die under 18, to B. A dies without having ever had a child. The bequest to B takes effect.

(ii) A bequeaths a sum of money to B, on condition that he shall execute a certain document within three months after A's death, and, if he should neglect to do so, to C. B dies in the testator's lifetime. The bequest to C takes effect.

130. Where the will shows an intention that the second bequest shall take effect only in the event of the first bequest failing in a particular manner, the second bequest shall not take effect, unless the prior bequest fails in that particular manner.

Section 117,
Act X of
1865.

Illustration.

A makes a bequest to his wife, but in case she should die in his lifetime, bequeaths to B that which he had bequeathed to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him, the bequest to B does not take effect.

131. (1) A bequest may be made to any person with the condition Section 118, Act X of 1865.

Bequest over, conditional upon happening or not happening of specified uncertain event.

superadded that, in case a specified uncertain event shall happen, the thing bequeathed shall go to another person, or that

in case a specified uncertain event shall not happen, the thing bequeathed shall go over to another person.

(2) In each case the ulterior bequest is subject to the rules contained in sections 120, 121, 122, 123, 124, 125, 126, 127, 129 and 130.

Illustrations.

(i) A sum of money is bequeathed to A, to be paid to him at the age of 18, and if he shall die before he attains that age, to B. A takes a vested interest in the legacy, subject to be divested and to go to B in case A dies under 18.

(ii) An estate is bequeathed to A with a proviso that if A shall dispute the competency of the testator to make a will, the estate shall go to B. A disputes the competency of the testator to make a will. The estate goes to B.

(iii) A sum of money is bequeathed to A for life, and, after his death, to B; but if B shall then be dead, leaving a son, such son is to stand in the place of B. B takes a vested interest in the legacy, subject to be divested if he dies leaving a son in A's lifetime.

(iv) A sum of money is bequeathed to A and B, and if either should die during the life of C. then to the survivor living at the death of C. A and B die before C. The gift over cannot take effect, but the representative of A takes one-half of the money, and the representative of B takes the other half.

(v) A bequeaths to B the interest of a fund for life, and directs the fund to be divided at her death equally among her three children, or such of them as shall be living at her death. All the children of B die in B's lifetime. The bequest over cannot take effect, but the interests of the children pass to their representatives.

132. An ulterior bequest of the kind contemplated by section 131 cannot take effect, unless the condition is strictly fulfilled. Section 119, Act X of 1865.

Condition must be strictly fulfilled.

Illustrations.

(i) A legacy is bequeathed to A, with a proviso that, if he marries without the consent of B, C and D, the legacy shall go to E. D dies. Even if A marries without the consent of B and C, the gift to E does not take effect.

(ii) A legacy is bequeathed to A, with a proviso that, if he marries without the consent of B, the legacy shall go to C. A marries with the consent of B. He afterwards becomes a widower and marries again without the consent of B. The bequest to C does not take effect.

(iii) A legacy is bequeathed to A, to be paid at 18, or marriage, with a proviso that, if A dies under 18 or marries without the consent of B, the legacy shall go to C. A marries under 18, without the consent of B. The bequest to C takes effect.

133. If the ulterior bequest be not valid, the original bequest is not affected by invalidity of second. Section 120, Act X of 1865.

Illustrations.

(i) An estate is bequeathed to A for his life with condition superadded that, if he shall not on a given day walk 100 miles in an hour, the estate shall go to B. The condition being void, A retains his estate as if no condition had been inserted in the will.

(ii) An estate is bequeathed to A for her life and, if she do not desert her husband, to B. A is entitled to the estate during her life as if no condition had been inserted in the will.

(iii) An estate is bequeathed to A for life, and, if he marries, to the eldest son of B for life. B, at the date of the testator's death, had not had a son. The bequest over is void under section 105, and A is entitled to the estate during his life.

134. A bequest may be made with the condition superadded that it shall cease to have effect in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Bequest conditioned that it shall cease to have effect in case a specified uncertain event shall happen, or not happen.

shall cease to have effect in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Illustrations.

(i) An estate is bequeathed to A for his life, with a proviso that, in case he shall cut down a certain wood, the bequest shall cease to have any effect. A cuts down the wood. He loses his life-interest in the estate.

(ii) An estate is bequeathed to A, provided that, if he marries under the age of 25 without the consent of the executors named in the will, the estate shall cease to belong to him. A marries under 25 without the consent of the executors. The estate ceases to belong to him.

(iii) An estate is bequeathed to A, provided that, if he shall not go to England within three years after the testator's death, his interest in the estate shall cease. A does not go to England within the time prescribed. His interest in the estate ceases.

(iv) An estate is bequeathed to A, with a proviso that if she becomes a nun, she shall cease to have any interest in the estate. A becomes a nun. She loses her interest under the will.

(v) A fund is bequeathed to A for life, and, after his death, to B, if B shall be then living, with a proviso that, if B shall become a nun, the bequest to her shall cease to have any effect. B becomes a nun in the life-time of A. She thereby loses her contingent interest in the fund.

135. In order that a condition that a bequest shall cease to have effect may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of a bequest as contemplated by section 120.

Such condition must not be invalid under section 120.

that the event to which it relates be one which could legally constitute the condition of a bequest as contemplated by section 120.

136. Where a bequest is made with a condition superadded that, unless the legatee shall perform a certain act, the subject-matter of the bequest shall go to another person, or the bequest shall cease to have effect but no time is specified for the performance of the act; if the legatee takes any step which renders impossible or indefinitely postpones the performance of the act required, the legacy shall go as if the legatee had died without performing such act.

Result of legatee rendering impossible or indefinitely postponing act for which no time specified, and on non-performance of which subject-matter to go over.

tion superadded that, unless the legatee shall perform a certain act, the subject-matter of the bequest shall go to another person, or the bequest shall cease to have effect but no time is specified for the performance of the act; if the legatee takes any step which renders impossible or indefinitely postpones the performance of the act required, the legacy shall go as if the legatee had died without performing such act.

Illustrations.

(i) A bequest is made to A, with a proviso that, unless he enters the Army, the legacy shall go over to B. A takes Holy Orders, and thereby renders it impossible that he should fulfil the condition. B is entitled to receive the legacy.

(ii) A bequest is made to A, with a proviso that it shall cease to have any effect if he does not marry B's daughter. A marries a stranger and thereby indefinitely postpones the fulfilment of the conditions. The bequest ceases to have effect.

137. 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

Performance of condition, precedent or subsequent, within specified time. Further time in case of fraud.

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 shall be requisite to make up for the delay caused by such fraud.

CHAPTER XII.

OF BEQUESTS WITH DIRECTIONS AS TO APPLICATION OR ENJOYMENT.

138. Where a fund is bequeathed absolutely to Section 125, Act X of 1865. or for the benefit of any person, but the will contains a direction that fund be employed in particular manner following absolute bequest of same to or for benefit of any person. a direction that it shall be applied or enjoyed in a particular manner, the legatee shall be entitled to receive the fund as if the will had contained no such direction.

Illustration.

A sum of money is bequeathed towards purchasing a country residence for A, or to purchase an annuity for A, or to place A in any business. A chooses to receive the legacy in money. He is entitled to do so.

139. Where a testator absolutely bequeaths a Section 126, Act X of 1865. fund, so as to sever it from his own estate, but directs that the mode of enjoyment of absolute bequest is to be restricted, to secure specified benefit for legatee. enjoyment of it by the legatee shall be restricted so as to secure a specified benefit for the legatee; if that benefit cannot be obtained for the legatee, the fund belongs to him as if the will had contained no such direction.

Illustrations.

(i) A bequeaths the residue of his property to be divided equally among his daughters, and directs that the shares of the daughters shall be settled upon themselves respectively for life and be paid to their children after their death. All the daughters die unmarried. The representatives of each daughter are entitled to her share of the residue.

(ii) A directs his trustees to raise a sum of money for his daughter, and he then directs that they shall invest the fund and pay the income arising from it to her during her life, and divide the principal among her children after her death. The daughter dies without having ever had a child. Her representatives are entitled to the fund.

140. Where a testator does not absolutely bequeath a fund, so as to sever it from his own estate, but gives it for certain purposes, and part of those purposes cannot be fulfilled, the fund, or so much of it as has not been exhausted upon the objects contemplated by the will, remains a part of the estate of the testator.

Illustrations.

(i) A directs that his trustees shall invest a sum of money in a particular way, and shall pay the interest to his son for life, and at his death shall divide the principal among his children. The son dies without having ever had a child. The fund, after the son's death, belongs to the estate of the testator.

(ii) A bequeaths the residue of his estate, to be divided equally among his daughters with a direction that they are to have the interest only during their lives, and that at their decease the fund shall go to their children. The daughters have no children. The fund belongs to the estate of the testator.

CHAPTER XIII.

OF BEQUESTS TO AN EXECUTOR.

141. If a legacy is bequeathed to a person who Section 123, Act X of 1865. is named an executor of the will, he shall not take the legacy unless he proves the will or otherwise manifests an intention to act as executor.

Legatee named as executor cannot take unless he shows intention to act as executor.

Illustration.

A legacy is given to A, who is named an executor. A orders the funeral according to the directions contained in the will, and dies a few days after the testator, without having proved the will. A has manifested an intention to act as executor.

CHAPTER XIV.

OF SPECIFIC LEGACIES.

142. Where a testator bequeaths to any person Section 123, Act X of 1865. a specified part of his property, which is distinguished from all other parts of his property, the legacy is said to be specific.

Specific legacy defined.

Illustrations.

(i) A bequeaths to B—

- “ the diamond ring presented to me by C ”;
- “ my gold chain ”;
- “ a certain bale of wool ”;
- “ a certain piece of cloth ”;
- “ all my household goods which shall be in or about my dwelling-house in M Street, in Calcutta, at time of my death ”;
- “ the sum of 1,000 rupees in a certain chest ”;
- “ the debt which B owes me ”;
- “ all my bills, bonds and securities belonging to me lying in my lodgings in Calcutta ”;
- “ all my furniture in my house in Calcutta ”;
- “ all my goods on board a certain ship now lying in the river Hughli ”;
- “ 2,000 rupees which I have in the hands of C ”;
- “ the money due to me on the bond of D ”;
- “ my mortgage on the Rampur factory ”;
- “ one-half of the money owing to me on my mortgage of Rampur factory ”;
- “ 1,000 rupees, being part of a debt due to me from C ”;
- “ my capital stock of 1,000*l.* in East India Stock ”;
- “ my promissory notes of the Government of India for 10,000 rupees in their 4 per cent. loan ”;
- “ all such sums of money as my executors may, after my death, receive in respect of the debt due to me from the insolvent firm of D and Company ”;
- “ all the wine which I may have in my cellar at the time of my death ”;
- “ such of my horses as B may select ”;
- “ all my shares in the Imperial Bank of India ”;
- “ all my shares in the Imperial Bank of India which I may possess at the time of my death ”;
- “ all the money which I have in the 5½ per cent. loan of the Government of India ”;
- “ all the Government securities I shall be entitled to at the time of my decease.”

Each of these legacies is specific.

(ii) A, having Government promissory notes for 10,000 rupees, bequeaths to his executors “ Government promissory notes for 10,000 rupees in trust to sell ” for the benefit of B. The legacy is specific.

(iii) A having property at Benares, and also in other places bequeaths to B all his property at Benares. The legacy is specific.

(iv) A bequeaths to B —

- his house in Calcutta :
- his zamindari of Rampur :
- his taluq of Ramnagar :
- his lease of the indigo-factory of Salkya :
- an annuity of 500 rupees out of the rents of his zamindari of W.

A directs his zamindari of X to be sold, and the proceeds to be invested for the benefit of B.

Each of these bequests is specific.

(v) A by his will charges his zamindari of Y with an annuity of 1,000 rupees to C during his life, and subject to this charge he bequeaths the zamindari to D. Each of these bequests is specific.

(vi) A bequeaths a sum of money —

- to buy a house in Calcutta for B :
- to buy an estate in zila Faridpur for B :
- to buy a diamond ring for B :
- to buy a horse for B :
- to be invested in shares in the Imperial Bank of India for B :
- to be invested in Government securities for B.

A bequeaths to B—

- " a diamond ring ":
- " a horse ":
- " 10,000 rupees worth of Government securities "
- " an annuity of 500 rupees ":
- " 2,000 rupees to be paid in cash ":
- " so much money as will produce 5,000 rupees four per cent. Government securities."

These bequests are not specific.

(vii) A, having property in England and property in India, bequeaths a legacy to B, and directs that it shall be paid out of the property which he may leave in India. He also bequeaths a legacy to C, and directs that it shall be paid out of property which he may leave in England. No one of these legacies is specific.

143. Where a certain sum is bequeathed, the legacy is not specific merely because the stock, funds or securities in which it is invested are described in the will. Section 130, Act X of 1865.

Bequest of certain sum where stocks, etc., in which invested are described.

Illustration.

A bequeaths to B—

- " 10,000 rupees of my funded property ":
- " 10,000 rupees of my property now invested in shares of the East Indian Railway Company "
- " 10,000 rupees, at present secured by mortgage of Rampur factory."

No one of these legacies is specific.

144. Where a bequest is made in general terms of a certain amount of any kind of stock, the legacy is not specific merely because the testator was, at the date of his will, possessed of stock of the specified kind, to an equal or greater amount than the amount bequeathed. Section 131, Act X of 1865.

Bequest of stock where testator had, at date of will, equal or greater amount of stock of same kind.

Illustration.

A bequeaths to B 5,000 rupees five per cent. Government securities. A had at the date of the will five per cent. Government securities for 5,000 rupees. The legacy is not specific.

145. A money legacy is not specific merely because the will directs its payment to be postponed until some part of the property of the testator has been reduced to a certain form, or remitted to a certain place. Section 132, Act X of 1865.

Illustration.

A bequeaths to B 10,000 rupees and directs that this legacy shall be paid as soon as A's property in India shall be realised in England. The legacy is not specific.

146. Where a will contains a bequest of the residue of the testator's property along with an enumeration of some items of property not previously bequeathed, the articles enumerated shall not be deemed to be specifically bequeathed. Section 133, Act X of 1865.

147. Where property is specifically bequeathed to two or more persons in succession, it shall be retained in the form in which the testator left it, although it may be of such a nature that its value is continually decreasing. Section 134, Act X of 1865.

Illustrations.

(1) A, having lease of a house for a term of years, fifteen of which were unexpired at the time of his death, has bequeathed the lease to B for his life, and after B's death to C. B is to enjoy the property as A left it, although, if B lives for fifteen years, C can take nothing under the bequest.

(2) A, having an annuity during the life of B, bequeaths it to C, for his life, and, after C's death, to D. C is to enjoy the annuity as A left it, although, if B dies before D, D can take nothing under the bequest.

148. Where property comprised in a bequest to two or more persons in succession is not specifically bequeathed, it shall, in the absence of any direction to the contrary, be sold, and the proceeds of the sale shall be invested in such securities as the High Court may by any general rule authorize or direct, and the fund thus constituted shall be enjoyed by the successive legatees according to the terms of the will. Section 135, Act X of 1865.

Illustration.

A, having a lease for a term of years, bequeaths all his property to B for life, and, after B's death, to C. The lease must be sold, the proceeds invested as stated in this section and the annual income arising from the fund is to be paid to B for life. At B's death the capital of the fund is to be paid to C.

149. If there is a deficiency of assets to pay legacies, a specific legacy is not liable to abate with the general legacies. Section 136, Act X of 1865.

Where deficiency of assets to pay legacies, specific legacy not to abate with general legacies.

CHAPTER XV.

OF DEMONSTRATIVE LEGACIES.

150. Where a testator bequeaths a certain sum of money, or a certain quantity of any other commodity, and refers to a particular fund or Section 137, Act X of 1865.

stock so as to constitute the same the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.

Explanation.—The distinction between a specific legacy and a demonstrative legacy consists in this, that—

where specified property is given to the legatee, the legacy is specific;

where the legacy is directed to be paid out of specified property, it is demonstrative.

Illustrations.

(i) A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The legacy to B is specific, the legacy to C is demonstrative.

(ii) A bequeaths to B—

“ten bushels of the corn which shall grow in my field of Green Acre”;

“80 chests of the indigo which shall be made at my factory of Rampur”;

“10,000 rupees out of my five per cent. promissory notes of the Government of India”;

an annuity of 500 rupees “from my funded property”;

“1,000 rupees out of the sum of 2,000 rupees due to me by C”;

an annuity, and directs it to be paid “out of the rents arising from my taluk of Ramnagar”.

(iii) A bequeaths to B—

“10,000 rupees out of my estate at Ramnagar,” or charges it on his estate at Ramnagar:

“10,000 rupees, being my share of the capital embarked in a certain business.”

Each of these bequests is demonstrative.

151. Where a portion of a fund is specifically bequeathed and a legacy Section 134,
Act X of
1865.

Order of payment is directed to be paid when legacy directed to be paid out of fund the subject of specific legacy. the portion specifically bequeathed shall first be paid to the legatee, and the demonstrative legacy shall be paid out of the residue of the fund and, so far as the residue shall be deficient, out of the general assets of the testator.

Illustration.

A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The debt due to him from W is only 1,500 rupees; of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

CHAPTER XVI.

(OF ADEMPTION OF LEGACIES.

152. If anything which has been specifically bequeathed does not Section 133,
Act X of
1865.

Ademption explained. belong to the testator at

the time of his death, or has been converted into property of a different kind, the legacy is adeemed; that is, it cannot take effect, by reason of the subject-matter having been withdrawn from the operation of the will.

Illustrations.

(i) A bequeaths to B.—

“the diamond ring presented to me by C”;

“my gold chain”;

“a certain bale of wool”;

“a certain piece of cloth”;

“all my household goods which shall be in or about my dwelling house in M Street in Calcutta, at the time of my death.”

in his life time,—

sells or gives away the ring:

converts the chain into a cup:

converts the wool into cloth:

makes the cloth into a garment:

takes another house into which he removes all his goods.

Each of these legacies is adeemed.

(ii) A bequeaths to B—

“the sum of 1,000 rupees in a certain chest”;

“all the horses in my stable.”

At the death of A, no money is found in the chest, and no horses in the stable. The legacies are adeemed.

(iii) A bequeaths to B certain bales of goods. A takes the goods with him on a voyage. The ship and goods are lost at sea, and A is drowned. The legacy is adeemed.

153. A demonstrative legacy is not adeemed Section 140,
by reason that the pro- Act X of
Non-ademption of perty on which it is 1865.
demonstrative legacy. charged by the will does
not exist at the time of the death of the testator,
or has been converted into property of a different
kind, but it shall in such case be paid out of the
general assets of the testator.

154. Where the thing specifically bequeathed Section 141,
is the right to receive Act X of
Ademption of speci- something of value from 1865.
fic bequest of right to
receive something from
third party. a third party, and the
testator himself receives
it, the bequest is adeemed.

Illustrations.

(i) A bequeaths to B—

“the debt which C owes me”;

“2,000 rupees which I have in the hands of D”;

“the money due to me on the bond of E”;

“my mortgage on the Rampur factory.”

All these debts are extinguished in A's lifetime, some with and some without his consent. All the legacies are adeemed.

(ii) A bequeaths to B his interest in certain policies of life assurance. A in his lifetime receives the amount of the policies. The legacy is adeemed.

155. The receipt by the testator of a part of Section 142,
an entire thing specifically Act X of
Ademption *pro tanto* bequeathed shall operate 1865.
by testator's receipt of
part of entire thing
specifically bequeathed. as an ademption of the
legacy to the extent of
the sum so received.

Illustration.

A bequeaths to B “the debt due to me by C.” The debt amounts to 10,000 rupees. C pays to A 5,000 rupees the one-half of the debt. The legacy is revoked by ademption, so far as regards the 5,000 rupees received by A.

156. If a portion of an entire fund or stock is specifically bequeathed, the receipt by the testator of a portion of the fund or stock shall operate as an ademption only to the extent of the amount so received; and the residue of the fund or stock shall be applicable to the discharge of the specific legacy.

Ademption pro tanto
by testator's receipt of
portion or entire fund
of which portion has
been specifically be-
queathed.

Section 143,
Act X of
1865.

Illustration.

A bequeaths to B one-half of the sum of 10,000 rupees due to him from W. A in his lifetime receives 6,000 rupees, part of the 10,000 rupees. The 4,000 rupees which are due from W to A at the time of his death belong to B under the specific bequest.

157. Where a portion of a fund is specifically bequeathed to one legatee, and a legacy charged on the same fund is bequeathed to another legatee, then, if the testator receives a portion of that fund, and the remainder of the fund is insufficient to pay both the specific and the demonstrative legacy, the specific legacy shall be paid first, and the residue (if any) of the fund shall be applied so far as it will extend in payment of the demonstrative legacy, and the rest of the demonstrative legacy shall be paid out of the general assets of the testator.

Order of payment
where portion of fund
specifically bequeathed
to one legatee, and
legacy charged on same
fund to another, and,
testator having
received portion of
that fund, remainder
insufficient to pay both
legacies.

Section 144,
Act X of
1865.

Illustration.

A bequeaths to B 1,000 rupees, part of the debt of 2,000 rupees due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. A afterwards receives 5,000 rupees, part of that debt, and dies leaving only 1,500 rupees due to him from W. Of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

158. Where stock which has been specifically bequeathed does not exist at the testator's death, the legacy is adeemed.

Ademption where
stock, specifically
bequeathed, does not
exist at testator's
death.

Section 145,
Act X of
1865.

Illustration.

A bequeaths to B—

“my capital stock of 1,000*l*. in East India Stock”;

“my promissory notes of the Government of India for 10,000 rupees in their 4 per cent. loan.”

A sells the stock and the notes. The legacies are adeemed.

159. Where stock which has been specifically bequeathed exists only in part at the testator's death, the legacy is adeemed so far as regards that part of the stock which has ceased to exist.

Ademption pro tanto
where stock, specifi-
cally bequeathed, exists
in part only at testa-
tor's death.

Section 146,
Act X of
1865.

Illustration.

A bequeaths to B his 10,000 rupees in the 5*½* per cent. loan of the Government of India. A sells one-half of his 10,000 rupees in the loan in question. One-half of the legacy is adeemed.

160. A specific bequest of goods under a description connecting them with a certain place is not adeemed by reason that they have been removed from such place from any temporary cause, or by fraud, or without the knowledge or sanction of the testator.

Illustrations.

(i) A bequeaths to B "all my household goods which shall be in or about my dwelling house in Calcutta at the time of my death." The goods are removed from the house to save them from fire. A dies before they are brought back.

(ii) A bequeaths to B "all my household goods which shall be in or about my dwelling house in Calcutta at the time of my death." During A's absence upon a journey, the whole of the goods are removed from the house. A dies without having sanctioned their removal.

Neither of these legacies is adeemed.

161. The removal of the thing bequeathed from the place in which it is stated in the will to be situated does not constitute an ademption, where the place is only referred to in order to complete the description of what the testator meant to bequeath.

Illustrations.

(i) A bequeaths to B "all the bills, bonds and other securities for money belonging to me now lying in my lodgings in Calcutta." At the time of his death, these effects had been removed from his lodgings in Calcutta.

(ii) A bequeaths to B all his furniture then in his house in Calcutta. The testator has a house at Calcutta and another at Chinsurah, in which he lives alternately, being possessed of one set of furniture only which he removes with himself to each house. At the time of his death the furniture is in the house at Chinsurah.

(iii) A bequeaths to B all his goods on board a certain ship then lying in the river Hughli. The goods are removed by A's directions to a warehouse, in which they remain at the time of A's death.

No one of these legacies is revoked by ademption.

162. Where the thing bequeathed is not the right to receive some thing of value from a third person, but the money or other commodity which may be received from the third person by the testator himself or by his representatives, the receipt of such sum of money or other commodity by the testator shall not constitute an ademption; but if he mixes it up with the general mass of his property, the legacy is adeemed.

Illustration.

A bequeaths to B whatever sum may be received from his claim on C. A receives the whole of his claim on C, and sets it apart from the general mass of his property. The legacy is not adeemed.

163. Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place by operation of law, or in the course of execution of the provisions of any legal

instrument under which the thing bequeathed was held, the legacy is not adeemed by reason of such change.

Illustrations.

(i) A bequeaths to B "all the money which I have in the 5½ per cent. loan of the Government of India." The securities for the 5½ per cent. loan are converted during A's lifetime into 5 per cent. stock.

(ii) A bequeaths to B the sum of 2,000*l.* invested in Consols in the names of trustees for A. The sum of 2,000*l.* is transferred by the trustees into A's own name.

(iii) A bequeaths to B the sum of 10,000 rupees in promissory notes of the Government of India which he has power under his marriage settlement to dispose of by will. Afterwards, in A's lifetime, the fund is converted into Consols by virtue of an authority contained in the settlement.

No one of these legacies has been adeemed.

164. Where a thing specifically bequeathed Section 151, Act X of 1865. undergoes a change of subject without testator's knowledge between the date of the will and the testator's death, and the change takes place without the knowledge or sanction of the testator, the legacy is not adeemed.

Illustration.

A bequeaths to B "all my 3 per cent. Consols." The Consols are, without A's knowledge, sold by his agent, and the proceeds converted into East India Stock. This legacy is not adeemed.

165. Where stock which has been specifically bequeathed Section 152, Act X of 1865. is lent to a third party on condition that it shall be replaced, and it is replaced accordingly, the legacy is not adeemed.

166. Where stock specifically bequeathed Section 153, Act X of 1865. is sold, and an equal quantity of the same stock is afterwards purchased and belongs to the testator at his death, the legacy is not adeemed.

CHAPTER XVII.

OF THE PAYMENT OF LIABILITIES IN RESPECT OF THE SUBJECT OF A BEQUEST.

167. (1) Where property specifically bequeathed Section 154, Act X of 1865. is subject at the death of the testator to any pledge, lien or incumbrance created by the testator himself or by any person under whom he claims, then, unless a contrary intention appears by the will, the legatee, if he accepts the bequest, shall accept it subject to such pledge or incumbrance, and shall (as between himself and the testator's estate) be liable to make good the amount of such pledge or incumbrance. †

(2) A contrary intention shall not be inferred from any direction which the will may contain for the payment of the testator's debts generally.

Explanation.—A periodical payment in the nature of land-revenue or in the nature of rent is not such an incumbrance as is contemplated by this section.

Illustrations.

(i) A bequeaths to B the diamond ring given him by C. At A's death the ring is held in pawn by D, to whom it has been pledged by A. It is the duty of A's executors, if the state of the testator's assets will allow them, to allow B to redeem the ring.

(ii) A bequeaths to B a zamindari which at A's death is subject to a mortgage for 10,000 rupees; and the whole of the principal sum, together with interest to the amount of 1,000 rupees, is due at A's death. B, if he accepts the bequest, accepts it subject to his charge, and is liable, as between himself and A's estate, to pay the sum of 11,000 rupees thus due.

168. Where anything is to be done to complete the testator's title to the thing bequeathed, it is to be done at the cost of the testator's estate. Section 155,
Act X of
1865.

Completion of testator's title to things bequeathed to be at cost of his estate.

Illustrations.

(i) A, having contracted in general terms for the purchase of a piece of land at a certain price, bequeaths to B, and dies before he has paid the purchase-money. The purchase-money must be made good out of A's assets.

(ii) A, having contracted for the purchase of a piece of land for a certain sum of money, one-half of which is to be paid down and the other half secured by mortgage of the land, bequeaths it to B, and dies before he has paid or secured any part of the purchase-money. One-half of the purchase-money must be paid out of A's assets.

169. Where there is a bequest of any interest in immoveable property in respect of which payment in the nature of land-revenue or in the nature of rent has to be made periodically, the estate of the testator shall (as between such estate and the legatee) make good such payments or a proportion of them, as the case may be, up to the day of his death. Section 156,
Act X of
1865.

Exoneration of legatee's immoveable property for which land-revenue or rent payable periodically.

Illustration.

A bequeaths to B a house, in respect of which 365 rupees are payable annually by way of rent. A pays his rent at the usual time, and dies 25 days after. A's estate will make good 25 rupees in respect of the rent.

170. In the absence of any direction in the will, where there is a specific bequest of stock in a joint stock company, if any call or other payment is due from the testator at the time of his death in respect of the stock, such call or payment shall, as between the testator's estate and the legatee, be borne by the estate; but, if any call or other payment becomes due in respect of such stock after the testator's death, the same shall, as between the testator's estate and the legatee, be borne by the legatee, if he accepts the bequest. Section 157,
Act X of
1865.

Exoneration of specific legatee's stock in joint stock company.

Illustrations.

(i) A bequeaths to B his shares in a certain railway. At A's death there was due from him the sum of 100 rupees in respect of each share, being the amount of a call which had been duly made, and the sum of five rupees in respect of each share, being the amount of interest which had accrued due in respect of the call. These payments must be borne by A's estate.

(ii) A has agreed to take 50 shares in an intended joint stock company, and has contracted to pay up 100 rupees in respect of each share, which sum must be paid before his title to the shares can be completed. A bequeaths these shares to B. The estate of A must make good the payments which were necessary to complete A's title.

(iii) A bequeaths to B his shares in a certain railway. B accepts the legacy. After A's death, a call is made in respect of the shares. B must pay the call.

(iv) A bequeaths to B his shares in a joint stock company. B accepts the bequest. Afterwards the affairs of the company are wound up, and each shareholder is called upon for contribution. The amount of the contribution must be borne by the legatee.

(v) A is the owner of ten shares in a railway company. At a meeting held during his lifetime a call is made of fifty rupees per share, payable by three instalments. A bequeaths his shares to B, and dies between the day fixed for the payment of the first and the day fixed for the payment of the second instalment, and without having paid the first instalment. A's estate must pay the first instalment, and B, if he accepts the legacy, must pay the remaining instalments.

CHAPTER XVIII.

OF BEQUESTS OF THINGS DESCRIBED IN GENERAL TERMS.

171. If there is a bequest of something described in general terms, the executor must purchase for the legatee what may reasonably be considered to answer the description. Section 158, Act X of 1865.

Illustrations.

(i) A bequeaths to B a pair of carriage-horses or a diamond ring. The executor must provide the legatee with such articles if the state of the assets will allow it.

(ii) A bequeaths to B "my pair of carriage-horses". A had no carriage-horses at the time of his death. The legacy fails.

CHAPTER XIX.

OF BEQUESTS OF THE INTEREST OR PRODUCE OF A FUND.

172. Where the interest or produce of a fund is bequeathed to any person, and the will affords no indication of an intention that the enjoyment of the bequest should be of limited duration, the principal as well as the interest shall belong to the legatee. Section 159, Act X of 1865.

Illustrations.

(i) A bequeaths to B the interest of his 5 per cent. promissory notes of the Government of India. There is no other clause in the will affecting those securities. B is entitled to A's 5 per cent. promissory notes of the Government of India.

(ii) A bequeaths the interest of his 5½ per cent. promissory notes of the Government of India to B for his life, and after his death to C. B is entitled to the interest of the notes during his life, and C is entitled to the notes upon B's death.

(iii) A bequeaths to B the rents of his lands at X. B is entitled to the lands.

CHAPTER XX.

OF BEQUESTS OF ANNUITIES.

173. Where an annuity is created by will, the legatee is entitled to receive it for his life only, unless a contrary intention appears by the will, notwithstanding that the annuity is directed to be paid out of the property generally, or that a sum of money is bequeathed to be invested in the purchase of it. Section 160, Act X of 1865.

Illustrations.

(i) A bequeaths to B 500 rupees a year. B is entitled during his life to receive the annual sum of 500 rupees.

(ii) A bequeaths to B the sum of 500 rupees monthly. B is entitled during his life to receive the sum of 500 rupees every month.

(iii) A bequeaths an annuity of 500 rupees to B for life, and on B's death to C. B is entitled to an annuity of 500 rupees during his life. C, if he survives B, is entitled to an annuity of 500 rupees from B's death until his own death.

174. Where the will directs that an annuity Section 161, Act X of 1865.

Period of vesting where will directs that annuity be provided out of proceeds of property, or out of property generally, or where money bequeathed to be invested in purchase of annuity.

shall be provided for any person out of the proceeds of property, or out of property generally, or where money is bequeathed to be invested in the purchase of any annuity for any person, on the testator's death the legacy vests in interest in the legatee, and he is entitled at his option to have an annuity purchased for him or to receive the money appropriated for that purpose by the will.

Illustrations.

(i) A by his will directs that his executors shall, out of his property, purchase an annuity of 1,000 rupees for B. B is entitled at his option to have an annuity of 1,000 rupees for his life purchased for him, or to receive such a sum as will be sufficient for the purchase of such an annuity.

(ii) A bequeaths a fund to B for his life, and directs that after B's death, it shall be laid out in the purchase of an annuity for C. B and C survive the testator. C dies in B's lifetime. On B's death the fund belongs to the representative of C.

175. Where an annuity is bequeathed, but Section 162, Act X of 1865.

Abatement of annuity.

the assets of the testator are not sufficient to pay all the legacies given by the will, the annuity shall abate in the same proportion as the other pecuniary legacies given by the will.

176. Where there is a gift of an annuity and Section 163, Act X of 1865.

Where gift of annuity and residuary gift, whole annuity to be first satisfied.

a residuary gift, the whole of the annuity is to be satisfied before any part of the residue is paid to the residuary legatee, and, if necessary, the capital of the testator's estate shall be applied for that purpose.

CHAPTER XXI.

OF LEGACIES TO CREDITORS AND PORTIONERS.

177. Where a debtor bequeaths a legacy to Section 164, Act X of 1865.

Creditor *prima facie* entitled to legacy as well as debt.

his creditor, and it does not appear from the will that the legacy is meant as a satisfaction of the debt, the creditor shall be entitled to the legacy as well as to the amount of the debt.

178. Where a parent, who is under obligation Section 165, Act X of 1865.

Child *prima facie* entitled to legacy as well as portion.

by contract to provide a portion for a child, fails to do so, and afterwards bequeaths a legacy to the child, and does not intimate by his will that the legacy is meant as a satisfaction of the portion, the child shall be entitled to receive the legacy as well as the portion.

Illustration.

A, by articles entered into in contemplation of his marriage with B, covenanted that he would pay to each of the daughters of the intended marriage a portion of 20,000 rupees on her marriage. This covenant having been broken, A bequeaths 20,000 rupees to each of the married daughters of himself and B. The legatees are entitled to the benefit of this bequest in addition to their portions.

179. No bequest shall be wholly or partially Section 166, Act X of 1865. deemed by a subsequent provision made by settlement or otherwise for the legatee.

No ademption by subsequent provision for legatee.

Illustrations.

() A bequeaths 20,000 rupees to his son B. He afterwards gives to B the sum of 20,000 rupees. The legacy is not thereby adeemed.

(i) A bequeaths 40,000 rupees to B, his orphan niece whom he had brought up from her infancy. Afterwards, on the occasion of B's marriage, A settles upon her the sum of 30,000 rupees. The legacy is not thereby diminished.

CHAPTER XXII.

OF ELECTION.

180. Where a person, by his will, professes to dispose of something which Section 167, Act X of 1865. he has no right to dispose of, the person to whom the thing belongs shall elect either to confirm such disposition or to dissent from it, and in the latter case, he shall give up any benefits which may have been provided for him by the will.

Circumstances in which election takes place.

181. An interest relinquished in the circumstances stated in section Section 168, Act X of 1865. 180 shall devolve as if it had not been disposed of by the will in favour of the legatee, subject, nevertheless, to the charge of making good to the disappointed legatee the amount or value of the gift attempted to be given to him by the will.

Devolution of interest relinquished by owner.

182. The provisions of sections 180 and 181 Section 169, Act X of 1865. apply whether the testator does or does not believe that which he professes to dispose of by his will to be his own.

Testator's belief as to his ownership immaterial.

Illustrations.

(i) The farm of Sultanpur was the property of C. A bequeathed it to B, giving a legacy of 1,000 rupees to C. C has elected to retain his farm of Sultanpur, which is worth 800 rupees. C forfeits his legacy of 1,000 rupees, of which 800 rupees goes to B, and the remaining 200 rupees falls into the residuary bequest, or devolves according to the rules of intestate succession, as the case may be.

(ii) A bequeaths an estate to B in case B's elder brother (who is married and has children) shall leave no issue living at his death. A also bequeaths to C a jewel, which belongs to B. B must elect to give up the jewel or to lose the estate.

(iii) A bequeaths to B 1,000 rupees, and to C an estate which will, under a settlement, belong to B if his elder brother (who is married and has children) shall leave no issue living at his death. B must elect to give up the estate or to lose the legacy.

(iv) A, a person of the age of 18, domiciled in British India but owning real property in England, to which C is heir at law, bequeaths a legacy to C and, subject thereto, devises and bequeaths to B "all my property whatsoever and wheresoever," and dies under 21. The real property in England does not pass by the will. C may claim his legacy without giving up the real property in England.

183. A bequest for a person's benefit is, for the Section 170.
 purpose of election, the ^{Act X of} same thing as a bequest ^{1865.}
 how regarded for purpose of election. made to himself.

Illustration.

The farm of Sultanpur Khurd being the property of B, A bequeathed it to C, and he bequeathed another farm called Sultanpur Buzurg to his own executors with a direction that it should be sold and the proceeds applied in payment of B's debts. B must elect whether he will abide by the will, or keep his farm of Sultanpur Khurd in opposition to it.

184. A person taking no benefit directly Section 171,
 under a will, but deriving ^{Act X of} a benefit under it indirect- ^{1865.}
 ly, is not put to his elec-
 tion.

Person deriving benefit indirectly not put to election.

Illustration.

The lands of Sultanpur are settled upon C for life, and after his death upon D, his only child. A bequeaths the lands of Sultanpur to B, and 1,000 rupees to C. C dies intestate shortly after the testator, and without having made any election. D takes out administration to C, and as administrator elects on behalf of C's estate to take under the will. In that capacity he receives the legacy of 1,000 rupees and accounts to B for the rents of the lands of Sultanpur which accrued after the death of the testator and before the death of C. In his individual character he retains the lands of Sultanpur in opposition to the will.

185. A person who in his individual capacity Section 172,
 takes a benefit under a will ^{Act X of}
 may, in another character, ^{1865.}
 elect to take in opposition
 to the will.

Person taking in individual capacity under will may in other character elect to take in opposition.

Illustration.

The estate of Sultanpur is settled upon A for life, and, after his death, upon B. A leaves the estate of Sultanpur to D, and 2,000 rupees to B, and 1,000 rupees to C, who is B's only child. B dies intestate, shortly after the testator, without having made an election. C takes out administration to B, and as administrator elects to keep the estate of Sultanpur in opposition to the will, and to relinquish the legacy of 2,000 rupees. C may do this, and yet claim his legacy of 1,000 rupees under the will.

186. Notwithstanding anything contained in sec- Section 172,
 tions 180 to 185, where a ^{Act X of}
 particular gift is expressed ^{1865.}
 in the will to be in lieu of
 something belonging to the legatee which is also
 in terms disposed of by the will, then, if the legatee
 claims that thing, he must relinquish the parti-
 cular gift, but he is not bound to relinquish any
 other benefit given to him by the will.

Exception to provisions of last six sections.

Illustration.

Under A's marriage-settlement his wife is entitled, if she survives him, to the enjoyment of the estate of Sultanpur during her life. A by his will bequeaths to his wife an annuity of 200 rupees during her life, in lieu of her interest in the estate of Sultanpur, which estate he bequeaths to his son. He also gives his wife a legacy of 1,000 rupees. The widow elects to take what she is entitled to under the settlement. She is bound to relinquish the annuity but not the legacy of 1,000 rupees.

187. Acceptance of a benefit given by a will Section 173,
 constitutes an election by ^{Act X of}
 the legatee to take under ^{1865.}
 the will, if he had know-
 ledge of his right to elect
 and of those circumstances which would influence
 the judgment of a reasonable man in making an
 election, or if he waives inquiry into the cir-
 cumstances.

When acceptance of benefit given by will constitutes election to take under will.

Illustrations.

(i) A is owner of an estate called Sultanpur Khurd, and has a life interest in another estate called Sultanpur Buzurg to which upon his death his son B will be absolutely entitled. The will of A gives the estate of Sultanpur Khurd to B, and the estate of Sultanpur Buzurg to C. B, in ignorance of his own right to the estate of Sultanpur Buzurg, allows C to take possession of it, and enters into possession of the estate of Sultanpur Khurd. B has not confirmed the bequest of Sultanpur Buzurg to C.

(ii) B, the eldest son of A, is the possessor of an estate called Sultanpur. A bequeaths Sultanpur to C, and to B the residue of A's property. B having been informed by A's executors that the residue will amount to 5,000 rupees, allows C to take possession of Sultanpur. He afterwards discovers that the residue does not amount to more than 500 rupees. B has not confirmed the bequest of the estate of Sultanpur to C.

188. (1) Such knowledge or waiver of inquiry Section 174, Act X of 1865.
 Circumstances in which knowledge or waiver is presumed or inferred shall, in the absence of evidence to the contrary, be presumed if the legatee has enjoyed for two years the benefits provided for him by the will without doing any act to express dissent.

(2) Such knowledge or waiver of inquiry may Section 175, Act X of 1865,
 be inferred from any act of the legatee which renders it impossible to place the persons interested in the subject-matter of the bequest in the same condition as if such act had not been done. .

Illustration.

A bequeaths to B an estate to which C is entitled, and to C a coal-mine. C takes possession of the mine and exhausts it. He has thereby confirmed the bequest of the estate to B.

189. If the legatee does not, within one year Section 176, Act X of 1865.
 after the death of the testator, signify to the testator's representatives his intention to confirm or to dissent from the will, the representatives shall, upon the expiration of that period, require him to make his election; and, if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the will.

190. In case of disability the election shall Section 177, Act X of 1865.
 be postponed until the disability ceases, or until the election is made by some competent authority.

CHAPTER XXIII.

OF GIFTS IN CONTEMPLATION OF DEATH.

191. (1) A man may dispose, by gift made Section 178, Act X of 1865.
 in contemplation of death, of any moveable property which he could dispose of by will.

(2) A gift is said to be made in contemplation of death where a man, who is ill and expects to die shortly of his illness, delivers to another the possession of any moveable property to keep as a gift in case the donor shall die of that illness.

(3) Such a gift may be resumed by the giver; and shall not take effect if he recovers from the illness during which it was made; nor if he survives the person to whom it was made.

Illustrations.

(i) A, being ill, and in expectation of death, delivers to B, to be retained by him in case of A's death,—

- a watch :
- a bond granted by C to A :
- a bank-note :
- a promissory note of the Government of India endorsed in blank :
- a bill of exchange endorsed in blank :
- certain mortgage-deeds.

A dies of the illness during which he delivered these articles.

B is entitled to—

- the watch :
- the debt secured by C's bond :
- the bank-note :
- the promissory note of the Government of India :
- the bill of exchange :
- the money secured by the mortgage-deeds.

(ii) A, being ill, and in expectation of death, delivers to B the key of a trunk or the key of a warehouse in which goods of bulk belonging to A are deposited, with the intention of giving him the control over the contents of the trunk, or over the deposited goods, and desires him to keep them in case of A's death. A dies of the illness during which he delivered these articles. B is entitled to the trunk and its contents or to A's goods of bulk in the warehouse.

(iii) A, being ill, and in expectation of death, puts aside certain articles in separate parcels and marks upon the parcels respectively the names of B and C. The parcels are not delivered during the life of A. A dies of the illness during which he set aside the parcels. B and C are not entitled to the contents of the parcels.

PART VII.

PROTECTION OF PROPERTY OF DECEASED.

192. (1) If any person dies leaving property, Section 1,
moveable or immoveable, Act XIX of 1841.

Person claiming right by succession to property of deceased may apply for relief against wrongful possession. any person claiming a right by succession thereto, or to any portion thereof, may make application to the District Judge of the district

where any part of the property is found or situate for relief, either after actual possession has been taken by another person, or when forcible means of seizing possession are apprehended.

(2) Any agent, relative or near friend, or the Section 2,
Court of Wards in cases within their cognizance, Act XIX of 1841.
may, in the event of any minor, or any disqualified or absent person being entitled by succession to such property as aforesaid, make the like application for relief.

193. The District Judge to whom such ap- Section 3,
plication is made shall, Act XIX of 1841.
Inquiry made by Judge. in the first place, examine

the applicant on oath, and may make such further inquiry, if any, as he thinks necessary as to whether there is sufficient ground for believing that the party in possession or taking forcible means for seizing possession has no lawful title, and that the applicant, or the person on whose behalf he applies, is really entitled and is likely to be materially prejudiced if left to the ordinary remedy of a suit, and that the application is made *bonâ fide*.

194. If the District Judge is satisfied that there is sufficient ground for Act XIX of 1841.
believing as aforesaid but
Procedure.

not otherwise, he shall summon the party complained of, and give notice of vacant or disturbed

possession by publication, and, after the expiration of a reasonable time, shall determine summarily the right to possession (subject to a suit as hereinafter provided) and shall deliver possession accordingly :

Provided that the Judge shall have the power to appoint an officer who shall take an inventory of effects, and seal or otherwise secure the same, upon being applied to for the purpose, without delay, whether he shall have concluded the inquiry necessary for *summoning* the party complained of or not.

195. If it further appears upon such *inquiry* as Section 5, Appointment of curator aforesaid that danger is Act XIX of 1841. pending determination of to be apprehended of the *proceeding*. misappropriation or waste of the property before the summary *proceeding* can be determined, and that the delay in obtaining security from the party in possession or the insufficiency thereof is likely to expose the party out of possession to considerable risk, provided he is the lawful owner, the District Judge may appoint one or more curators whose authority shall continue according to the terms of his or their respective appointments, and in no case beyond the determination of the summary *proceeding* and the confirmation or delivery of possession in consequence thereof :

Provided that, in the case of land, the Judge may delegate to the Collector, or to any officer subordinate to the Collector, the powers of a curator :

Provided, further, that every appointment of a curator in respect of any property shall be duly published.

196. The District Judge may authorise the Section 6, curator to take posses- Act XIX of 1841. sion of the property *either* Powers conferable on curator, generally, or until security is given by the party in possession, or until inventories of the property have been made, or for any other purpose necessary for securing the property from misappropriation or waste by the party in possession :

Provided that it shall be *in the discretion* of the Judge to *allow* the party in possession to continue in such possession on giving security or not, and any continuance in possession shall be subject to such orders as the Judge may issue touching inventories, or the securing of deeds or other effects.

197. (1) Where a certificate has been granted Section 23, under Part X or under Act VII of 1889. the Succession Certificate Prohibition of exercise of certain powers by curators. Payment of debts, etc., to curator. Act, 1889, or a grant of probate or letters of administration has been made, a curator appointed under this Part shall not exercise any authority lawfully belonging to the holder of the certificate or to the executor or administrator.

(2) All persons who have paid debts or rents to a curator authorised by a Court to receive them shall be indemnified, and the curator shall be responsible for the payment thereof to the person who has obtained the certificate, probate or letters of administration, as the case may be.

198. (1) The District Judge shall take from Section 7, the curator security for Act XIX of 1841. the faithful discharge of his trust, and for rendering satisfactory accounts of the same as hereinafter provided, and may authorise him to receive out of the property such remuneration, in no case exceeding five per centum on the moveable property and on the annual profits of the immoveable property, as the District Judge thinks reasonable.

(2) All surplus money realized by the curator shall be paid into Court, and invested in public securities for the benefit of the persons entitled thereto upon adjudication of the summary proceedings.

(3) Security shall be required from the curator with all reasonable despatch, and, where it is practicable, shall be taken generally to answer all cases for which the person may be afterwards appointed curator: but no delay in the taking of security shall prevent the Judge from immediately investing the curator with the powers of his office.

199. (1) Where the estate of the deceased person Section 8, consists wholly or in part Act XIX of 1841. of land paying revenue to Government, in all matters regarding the propriety of summoning the party in possession, of appointing a curator, or of nominating individuals to that appointment, the District Judge shall demand a report from the Collector, and the Collector shall thereupon furnish the same:

Report from Collector where estate includes revenue-paying land.

Provided that in cases of urgency the Judge may proceed, in the first instance, without such report.

(2) The Judge shall not be obliged to act in conformity with any such report, but, in case of his acting otherwise than according to such report, he shall immediately forward a statement of his reasons to the High Court, and the High Court, if it is dissatisfied with such reasons, shall direct the Judge to proceed conformably to the report of the Collector.

200. The curator shall be subject to all orders Section 7, of the District Judge re- Act XIX of 1841. garding the institution or the defence of suits, and all suits may be instituted or defended in the name of the curator on behalf of the estate:

Provided that an express authority shall be requisite in the order of the curator's appointment for the collection of debts or rents; but such express authority shall enable the curator to give a full acquittance for any sums of money received by virtue thereof.

201. Pending the custody of the property by Section 10, the curator, the District Act XIX of 1841. Judge may make such allowances to parties having a *prima facie* right thereto as upon a summary investigation of the rights and circumstances of the parties interested he considers necessary, and may, at his discretion, take security for the repayment thereof with interest, in the event of the party being found, upon the adjudication of the summary proceedings, not to be entitled thereto.

202. The curator shall file monthly accounts in abstract, and shall, on the expiry of each period of three months, if his administration lasts so long, and upon giving up the possession of the property, file a detailed account of his administration to the satisfaction of the District Judge.

203. (1) The accounts of the curator shall be open to the inspection of all parties interested; and it shall be competent for any such interested party to appoint a separate person to keep a duplicate account of all receipts and payments by the curator.

(2) If it is found that the accounts of the curator are in arrear, or that they are erroneous or incomplete, or if the curator does not produce them whenever he is ordered to do so by the District Judge, he shall be punishable with fine not exceeding one thousand rupees for every such default.

204. If the Judge of any district has appointed a curator, in respect of the whole of the property of a deceased person, such appointment shall preclude the Judge of any other district within the same province from appointing any other curator, but the appointment of a curator in respect of a portion of the property of the deceased shall not preclude the appointment within the same province of another curator in respect of the residue or any portion thereof:

Provided that no Judge shall appoint a curator or entertain a summary proceeding in respect of property which is the subject of a summary proceeding previously instituted under this Part before another Judge:

Provided, further, that, if two or more curators are appointed by different Judges for several parts of an estate, the High Court may make such order as it thinks fit for the appointment of one curator of the whole property.

205. An application under this Part to the District Judge must be made within six months of the death of the proprietor whose property is claimed by right in succession.

206. Nothing in this Part shall be deemed to authorise the contravention of any public act of settlement or of any legal directions given by a deceased proprietor of any property for the possession of his property after his decease in the event of minority or otherwise, and, in every such case, as soon as the Judge having jurisdiction over the property of a deceased person is satisfied of the existence of such directions, he shall give effect thereto.

207. Nothing in this Part shall be deemed to authorise any disturbance of the possession of a Court of Wards of any property; and in case a minor, or other disqualified person whose property is subject to the Court of Wards,

is the party on whose behalf application is made under this Part, the District Judge, if he determines to summon the party in possession and to appoint a curator, shall invest the Court of Wards with the curatorship of the estate pending the *proceeding* without taking security as aforesaid; and if the minor or other disqualified person, upon the adjudication of the summary *proceeding*, appears to be entitled to the property, possession shall be delivered to the Court of Wards.

208. Nothing contained in this Part shall be any impediment to the bringing of a suit either by the party whose application may have been rejected before or after the summoning of the party in possession, or by the party who may have been evicted from the possession under this Part.

209. The decision of a District Judge in a summary *proceeding* under this Part shall have no other effect than that of settling the actual possession; but for this purpose it shall be final, and shall not be subject to any appeal or review.

210. The Local Government may appoint public curators for any district or number of districts; and the District Judge having jurisdiction shall nominate such public curators in all cases where the choice of a curator is left discretionary with him under this Part.

PART VIII.

REPRESENTATIVE TITLE TO PROPERTY OF DECEASED ON SUCCESSION.

211. (1) 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.

(2) When the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, nothing herein contained shall vest in an executor or administrator any property of the deceased person which would otherwise have passed by survivorship to some other person.

212. (1) 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.

(2) This section shall not apply in the case of the intestacy of a Hindu, Muhammadan, Buddhist, Sikh, Jaina or Indian Christian.

213. (1) No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in British India has granted probate of the will under which the right is claimed, or has granted letters of administration with the will or with a copy of an authenticated copy of the will annexed.

(2) This section shall not apply in the case of Section 331, wills made by Muhamadans, and shall only ^{Act X of 1865.} apply in the case of wills made by any Hindu, ^{Section 2,} Buddhist, Sikh or Jaina where such wills are of the ^{Act XXI of 1870.} class specified in section 57.

214. (1) No Court shall—

Section 4,
Act VII of
1889.

Proof of representa-
tive title a condition
precedent to recovery
through the Courts of
debts from debtors of
deceased persons.

- (a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming *on succession* to be entitled to the effects of the deceased person or to any part thereof, or
- (b) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt,

except on the production, by the person so claiming, of—

- (i) a probate or letters of administration evidencing the grant to him of administration to the estate of the deceased, or
- (ii) a certificate granted under section 31 or section 32 of the Administrator General's III of 1913 Act, 1913, and having the debt mentioned therein, or
- (iii) a succession certificate granted under Part X and having the debt specified therein, or
- (iv) a certificate granted under the Succession VII of 1889 Certificate Act, 1889, or
- (v) a certificate granted under Bombay Regulation No. VIII of 1827 and, if granted after the first day of May, 1889, having the debt specified therein.

(2) The word "debt" in sub-section (1) includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes.

215. (1) A grant of probate or letters of ad- ^{Section 152,}

^{Effect on certificate of subsequent probate or letters of administration.} ^{ministration in respect of an estate shall be deemed to supersede any certificate previously granted under} ^{Act V of 1881.} ^{Section 21,} ^{Act VII of 1889.}

Part X or under the Succession Certificate Act, 1889, or Bombay Regulation No. VIII of 1827, ^{VII of 1889.} in respect of any debts or securities included in the estate.

(2) When at the time of the grant of the probate or letters any suit or other proceeding instituted by the holder of any such certificate regarding any such debt or security is pending, the person to whom the grant is made shall, on applying to the Court in which the suit or proceeding is pending, be entitled to take the place of the holder of the certificate in the suit or proceeding:

Provided that, when any certificate is superseded under this section, all payments made to the holder of such certificate in ignorance of such supersession shall be held good against claims under the probate or letters of administration.

216. After any grant of probate or letters of administration, no other ^{Section 250, Act X of 1865.} than the person to whom the same may have been granted ^{Section 82, Act V of 1881.} shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the province in which the same may have been granted, until such probate or letters of administration has or have been recalled or revoked.

PART IX.

PRORATE, LETTERS OF ADMINISTRATION AND ADMINISTRATION OF ASSETS OF DECEASED.

217. Save as otherwise provided by this Act ^{Section 2, Act X of 1865.} or by any other law for the time being in force, all grants ^{Sections 2 and 150, Act V of 1881.} of probate and letters of administration with the will annexed and the administration of the assets of the deceased in cases of *intestate* succession shall be made or carried out, as the case may be, in accordance with the provisions of this Part.

CHAPTER I.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

218. (1) If the deceased has died *intestate* ^{Section 23, Act V of 1861.} and was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

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

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

219. If the deceased has died *intestate* and ^{Section 250, Act X of 1865.} was not a person belonging to any of the classes referred to in section 218, those who are connected with him, either by marriage or by consanguinity, are entitled to obtain letters of administration of his estate and effects in the order and according to the rules hereinafter stated, namely :—

(a) If the deceased has left a widow, administration shall be granted to the widow, unless the ^{Section 251, Act X of 1865.} Court sees cause to exclude her, either on the ground of some personal disqualification, or because she has no interest in the estate of the deceased.

Illustrations.

(i) The widow is a lunatic or has committed adultery or has been barred by her marriage settlement of all interest in her husband's estate. There is cause for excluding her from the administration.

(ii) The widow has married again since the decease of her husband. This is not good cause for her exclusion.

(b) If the Judge thinks proper, he may associate any person or persons with the widow in the administration who would be entitled solely to the administration if there were no widow. Section 202, Act X of 1865.

(c) If there is no widow, or if the Court sees cause to exclude the widow, it shall commit the administration to the person or persons who would be beneficially entitled to the estate according to the rules for the distribution of an intestate's estate : Section 203, Act X of 1865.

Provided that, when the mother of the deceased is one of the class of persons so entitled, she shall be solely entitled to administration.

(d) Those who stand in equal degree of kindred to the deceased are equally entitled to administration. Section 204, Act X of 1865.

(e) The husband surviving his wife has the same right of administration of her estate as the widow has in respect of the estate of her husband. Section 205, Act X of 1865.

(f) When there is no person connected with the deceased by marriage or consanguinity who is entitled to letters of administration and willing to act, they may be granted to a creditor. Section 206, Act X of 1865.

(g) Where the deceased has left property in British India, letters of administration shall be granted according to the foregoing rules, notwithstanding that he had his domicile in a country in which the law relating to testate and intestate succession differs from the law of British India. Section 207, Act X of 1865.

220. 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. Section 14, Act V of 1881, Section 191, Act X of 1865.

221. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate. Section 15, Act V of 1881, Section 192, Act X of 1865.

222. (1) Probate shall be granted only to an executor appointed by the will. Section 6, Act V of 1881, Section 181, Act X of 1865.

(2) The appointment may be expressed or by necessary implication. Section 7, Act V of 1881, Section 182, Act X of 1865.

Illustrations.

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

(ii) 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-named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(iii) 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.

223. Probate cannot be granted to any person who is a minor or is of unsound mind, nor, unless the deceased was a Hindu, Section 183, Act X of 1865, Section 8, Act V of 1881.

Persons to whom probate cannot be granted.

Muhammedan, Buddhist, *Sikh* or *Jain* or an exempted person, to a married woman without the previous consent of her husband.

224. When several executors are appointed, Section 9, Act V of 1881.
 Grant of probate to several executors simultaneously or at different times. Probate may be granted to them all simultaneously or at different times. Section 164, Act X of 1865.

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 and then to A

225. (1) If a codicil is discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way reveals the appointment of executors made by the will. Section 10, Act V of 1881. Section 165, Act X of 1865.

(2) If different executors are appointed by the codicil, the probate of the will shall be revoked, and a new probate granted of the will and the codicil together.

226. 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. Section 11, Act V of 1881. Section 166, Act X of 1865.

227. 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. Section 12, Act V of 1881. Section 168, Act X of 1865.

228. When a will has been proved and deposited in a Court of competent jurisdiction situated beyond the limits of the Province, whether within or beyond the limits of His Majesty's dominions, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed. Section 5, Act V of 1881. Section 180, Act X of 1865.

229. 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 his executorship. Section 16, Act V of 1881. Section 183, Act X of 1865.

Provided that, when one or more of several executors 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.

230. 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. Section 17, Act V of 1881. Section 194, Act X of 1865.

CHAPTER II.

OF LIMITED GRANTS.

Grants limited in duration.

237. When a will has been lost or mislaid Section 208, Act X of 1865.
 Probate of copy or since the testator's death, or Section 24, Act V of 1881.
 draft of lost will. 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 is produced.

238. When a will has been lost or destroyed Section 209, Act X of 1865.
 and no copy has been made Section 25, Act V of 1881.
 Probate of contents of lost or destroyed will nor the draft preserved, probate may be granted of its contents if they can be established by evidence.

239. When the will is in the possession of a Section 210, Act X of 1865.
 Probate of copy where person residing out of the Section 26, Act V of 1881.
 original exists. 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 is produced.

240. Where no will of the deceased is forth- Section 211, Act X of 1865.
 Administration until coming, but there is reason Section 27, Act V of 1881.
 will produced. 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 is produced.

Grants for the use and benefit of others having right.

241. When any executor is absent from the Section 212, Act X of 1865.
 Administration, with province in which applica- Section 28, Act V of 1881.
 will annexed, to attorney of absent executor. tion 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 attorney or 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.

242. When any person to whom, if present, Section 213, Act X of 1865.
 Administration, with letters of administration, Section 29, Act V of 1881.
 will annexed, to attorney of absent person who, if present, would be entitled to administer. with the will annexed, might be granted, is absent from the province, letters of administration, with the will annexed, may be granted to his attorney or agent, limited as mentioned in section 241.

243. When a person entitled to administration Section 214, Act X of 1865.
 Administration to attorney of absent person entitled to administer in case of intestacy. 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 attorney or agent of the absent person, limited as mentioned in section 241. Section 30, Act V of 1881.

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

245. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatee who has attained majority, the grant shall be limited until one of them shall have attained his majority.

246. If a sole executor or a 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, is 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 is no such person, to such other person as the Court may think fit to appoint, for the use and benefit of the minor or lunatic until he attains majority or becomes of sound mind, as the case may be.

247. 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.

Grants for special purposes.

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

249. If an executor appointed generally gives an authority to an attorney or agent 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.

250. Where a person dies, leaving property of Section 221, Act X of 1865. which he was the sole or surviving trustee, or in Section 37, Act V of 1881. Administration limited to property in which person has beneficial interest. 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.

251. When it is necessary that the represent- Section 222, Act X of 1865. ative of a person deceased be made a party to a pend- Section 38, Act V of 1881. ing 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 cause or 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 cause or suit, and until a final decree shall be made therein and carried into complete execution.

252. If, at the expiration of twelve months Section 223, Act X of 1865. from the date of any probate or letters of administration, Section 39, Act V of 1881. the executor or administrator to whom the same has been granted is absent from the province within which the Court which has granted the probate or letters of administration exercises jurisdiction, *the Court may grant*, to any person whom it may think 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.

253. In any case in which it appears necessary Section 224, Act X of 1865. for preserving the property of a deceased person, the Section 40, Act V of 1881. Court within whose jurisdiction any of the property is situate may grant to any person, whom such Court may think fit, letters of administration limited to the collection and preservation of the property of the deceased and to the giving of discharges for debts due to his estate, subject to the directions of the Court.

254. (1) When a person has died intestate, or Section 225, Act X of 1865. leaving a will of which there is no executor willing and Section 41, Act V of 1881. 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, in ordinary circumstances, would be entitled to a grant of administration, the Court may, in its 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 it thinks fit to be administrator.

(2) In every such case letters of administration may be limited or not as the Court thinks fit.

Grants with exception.

255. 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. Section 226, Act X of 1865, Section 42, Act V of 1881.

256. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception. Section 227, Act X of 1865, Section 43, Act V of 1881.

Grants of the rest.

257. Whenever a grant with exception of probate, or of letters of administration with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate. Section 228, Act X of 1865, Section 44, Act V of 1881.

Grant of effects unadministered.

258. If an executor to whom probate has been granted has died, leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate. Section 229, Act X of 1865, Section 45, Act V of 1881.

259. 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. Section 230, Act X of 1865, Section 46, Act V of 1881.

260. When a limited grant has expired by efflux of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made. Section 231, Act X of 1865, Section 47, Act V of 1881.

CHAPTER III.

ALTERATION AND REVOCATION OF GRANTS.

261. Errors in names and descriptions, or in setting forth the time and place of the deceased's 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. Section 232, Act X of 1865, Section 48, Act V of 1881.

262. If, after the grant of letters of administration with the will annexed, a codicil is discovered, it may be added to the grant on due proof and identification, and the grant may be altered and amended accordingly. Section 233, Act X of 1865, Section 49, Act V of 1881.

263. The grant of probate or letters of administration may be revoked or annulled for just cause. Section 234, Act X of 1865. Section 50, Act V of 1881.

Explanation.—Just cause shall be deemed to exist where—

- (a) the proceedings to obtain the grant were defective in substance; or
- (b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; or
- (c) 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; or
- (d) the grant has become useless and inoperative through circumstances; or
- (e) 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 Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect. Sections 2 and 11, Act VI of 1889.

Illustrations.

- (i) The Court by which the grant was made had no jurisdiction.
- (ii) The grant was made without citing parties who ought to have been cited.
- (iii) The will of which probate was obtained was forged or revoked.
- (iv) 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.
- (v) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.
- (vi) Since probate was granted, a later will has been discovered.
- (vii) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the will.
- (viii) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.

CHAPTER IV.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

264. (1) The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district. Section 235, Act X of 1865. Section 51, Act V of 1881.

(2) Except in cases to which section 57 applies, no Court in any local area beyond the limits of the towns of Calcutta, Madras and Bombay, and the province of Burma, shall, where the deceased is a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, receive applications for probate or letters of administration until the Local Government has, by a notification in the local official Gazette, authorised it so to do. Section 2, Act V of 1881. Section 2, Schedule I, Act XXXVIII of 1920.

265. (1) The High Court may 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 prescribe.
Power to appoint Delegate of District Judge to deal with non-contentious cases. Section 235-A, Act X of 1865. Section 52, Act V of 1881. Section 2, Act VI of 1881.

Provided that, in the case of High Courts not established by Royal Charter, such appointment shall not be without the previous sanction of the Local Government.

(2) Persons so appointed shall be called "District Delegates".

266. 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 pending in his Court.
District Judge's powers as to grant of probate and administration. Section 236, Act X of 1865. Section 53, Act V of 1881.

267. (1) The District Judge may order any person to produce and bring into 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.
District Judge may order person to produce testamentary papers. Section 237, Act X of 1865. Section 54, Act V of 1881.

(2) If it is 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 such person to attend for the purpose of being examined respecting the same.

(3) Such person shall be bound to answer truly 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 Indian 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.
Section XLV of 1860.

(4) The costs of the proceeding shall be in the discretion of the Judge.

268. The proceedings of the Court of the District Judge in relation to the granting of probate and letters of administration shall, save as hereinafter otherwise provided, be regulated, so far as the circumstances of the case permit, by the Code of Civil Procedure, 1908.
Proceedings of District Judge's Court in relation to probate and administration. Section 238, Act X of 1865. Section 55, Act V of 1881. Code V of 1908.

269. (1) Until probate is granted of the will of a deceased person, or an administrator of his estate is constituted, the District Judge, within whose jurisdiction any part of the property of the deceased person is situate, is authorised and required to interfere for the protection of such property at the instance of any person claiming to be interested therein, and in all other cases where the Judge considers that the property incurs any risk of loss or damage: and for that purpose, if he thinks
When and how District Judge to interfere for protection of property. Section 239, Act X of 1865. Section 2, Act VII of 1901.

fit, to appoint an officer to take and keep possession of the property.

(2) This section shall not apply when the deceased is a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, nor shall it apply to any part of the property of an Indian Christian who has died intestate.

270. Probate of the will or letters of administration to the estate of a deceased person may be granted by a District Judge under the seal of his Court, Section 240, Act X of 1865, Section 56, Act V of 1881.

When probate or administration may be granted by District Judge. if it appears by a petition, verified as hereinafter provided, of the person applying for the same that the testator or intestate, as the case may be, at the time of his decease had a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge.

271. 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, it shall be in the discretion of the Judge to 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, to grant them absolutely, or limited to the property within his own jurisdiction. Section 241, Act X of 1865, Section 57, Act V of 1881.

Disposal of application made to Judge of district in which deceased had no fixed abode. Discretion of the Judge to 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, to grant them absolutely, or limited to the property within his own jurisdiction.

272. 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 provided, that the testator or intestate, as the case may be, at the time of his death *had a fixed place of abode* within the jurisdiction of such Delegate. Section 241, Act X of 1865, Section 58, Act V of 1881, Section 3, Act VI of 1881.

273. 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 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 have been granted : Section 242, Act X of 1865, Section 59, Act V of 1881, Act XII of 1891.

Provided that probates and letters of administration granted— Sections 2 (2) and 3 (1), Act VIII of 1903.

(a) by a High Court, or

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

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

274. (1) Where probate or letters of administration has or have been granted by a High Court or District Judge with the effect referred to in the proviso to section 273, the High Court or District Judge shall send a certificate thereof to the following Courts, namely :—

Transmission to High Courts of certificate of grants under proviso to section 273.

Section 242: A, Act X of 1865, Section 60, Act V of 1881. Sections 2 (3), and 3 (2), Act VIII of 1903.

(a) when the grant has been made by a High Court, to each of the other High Courts ;

(b) when the grant has been made by a District Judge, to the High Court to which such District Judge is subordinate and to each of the other High Courts.

(2) Every certificate referred to in sub-section (1) shall be made as nearly as circumstances admit in the form set forth in Schedule IV, and such certificate shall be filed by the High Court receiving the same.

(3) Where any portion of the assets has been stated by the petitioner, as hereinafter provided in sections 276 and 278, to be situate within the jurisdiction of a District Judge in another province, the Court required to send the certificate referred to 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.

275. The application for probate or letters of administration, if made and verified in the manner hereinafter provided, shall be conclusive for the purpose of authorising the grant of probate or administration : and no such grant shall be impeached by reason only that the testator or intestate 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.

Conclusiveness of application for probate or administration if properly made and verified.

Section 243, Act X of 1865, Section 61, Act V of 1881.

276. (1) Application for probate or for letters of administration, with the will annexed, shall be made by a petition distinctly written in English or 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 237, 238, and 239, a copy, draft, or statement of the contents thereof, annexed, and stating—

Petition for probate.

Section 244, Act X of 1865, Section 62, Act V of 1881.

(a) the time of the testator's death,

(b) that the writing annexed is his last will and testament,

(c) that it was duly executed,

(d) the amount of assets which are likely to come to the petitioner's hands, and

Section 3, Act VI of 1889.

(e) when the application is for probate, that the petitioner is the executor named in the will.

(2) In addition to these particulars, the petition shall further state,—

(a) 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

(b) 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. Section 4, Act VI of 1881.

(3) Where the application is to the District Judge and any portion of the assets likely to come to the petitioner's 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. Sections 2 (4) and 3 (3), Act VIII of 1903.

277. In cases wherein the will, copy or draft is written in any language other than English or 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 is 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, namely:— Section 245, Act X of 1865, Section 63, Act V of 1881.

In what cases translation of will to be annexed to petition.
Verification of translation by person other than Court translator.

“ 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.”

278. (1) Application for letters of administration shall be made by petition distinctly written as aforesaid and stating— Section 246, Act X of 1865, Section 64, Act V of 1881.

(a) the time and place of the deceased's death,

(b) the family or other relatives of the deceased, and their respective residences,

(c) the right in which the petitioner claims,

(d) the amount of assets which are likely to come to the petitioner's hands,

(e) *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*

(f) 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. Section 4, Act VI of 1881.

(2) Where the application is to the District Judge and any portion of the assets likely to come to the petitioner's 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. Sections 2 (4) and 3 (3), Act VIII of 1903.

279. (1) Every person applying to any of the Courts mentioned in the proviso to section 273 for probate of a will or letters of administration of an estate intended to have effect throughout British India, shall state in his petition, in addition to the matters respectively required by section 276 Section 246-A, Act X of 1865, Section 65, Act V of 1881, Section 2 (5), Act VIII of 1903.

Addition to statement in petition, etc., for probate or letters of administration in certain cases.

and section 278, 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.

(2) The Court to which any such application is made under the proviso to section 273, may, if it thinks fit, reject the same.

280. 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, namely :—

Petition for probate, etc., to be signed and verified. Section 247, Act X of 1865, Section 68, Act V of 1881.

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

281. Where the application is for probate, 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, namely :—

Verification of petition for probate, by one witness to will. Section 248, Act X of 1865, Section 67, Act V of 1881.

“ 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 (or that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence).

282. 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 deemed to have committed an offence under section 193 of the Indian Penal Code.

Punishment for false averment in petition or declaration. Section 249, Act X of 1865, Section 68, Act V of 1881, XLV of 1860.

283. (1) In all cases the District Judge or District Delegate may, if he thinks proper,—

Powers of District Judge. Section 250, Act X of 1865, Section 69, Act V of 1881, Section 9, Act VI of 1881.

(a) examine the petitioner in person, upon oath;

(b) 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;

(c) 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.

(2) 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 District Delegate issuing the same may direct.

(3) 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 copy of the citation to be sent to such other 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.

284. (1) Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate.

Caveats against grant of probate or administration.

Section 251, Act X of 1865, Section 70, Act V of 1881, Section 6, Act VI of 1881.

(2) Immediately on any caveat being lodged with any District Delegate, he shall send copy thereof to the District Judge.

(3) 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 had a 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.

(4) The caveat shall be made as nearly as circumstances admit in the form set forth in Schedule V.

Form of caveat.

Section 252, Act X of 1865, Section 71, Act V of 1881.

285. 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 has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court may think reasonable.

After entry of caveat, no proceeding taken on petition until after notice to caveator.

Section 253, Act X of 1865, Section 72, Act V of 1881, Section 6, Act VI of 1881.

286. A District Delegate shall not grant probate or letters of administration in any case in 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.

District Delegate when not to grant probate or administration.

Section 253, Act X of 1865, Section 73, Act V of 1881, Section 7, Act VI of 1881.

Explanation.—"Contention" means 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.

287. 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, of 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

Power to transmit statement to District Judge in doubtful cases where no contention.

Section 253, Act X of 1865, Section 74, Act V of 1881, Section 7, Act VI of 1881.

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.

288. 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 which 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.

Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

Section 253-1 C, Act X of 1865. Section 75, Act V of 1881. Section 7, Act VI of 1881.

289. When it appears to the District 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 form set forth in Schedule VI.

Grant of probate to be under seal of Court.

Section 254, Act X of 1865. Section 76, Act V of 1881. Sections 8 and 9, Act VI of 1881.

290. When 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 the form set forth in Schedule VII.

Grant of letters of administration to be under seal of Court.

Section 255, Act X of 1865. Section 77, Act V of 1881. Section 8, Act VI of 1881. Section 9, Act VI of 1881. Sections 5 and 13, Act VI of 1889.

291. (1) Every person to whom any grant of letters of administration, other than a grant under section 241, is committed, shall give a bond to the District Judge 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 may, by general or special order, direct:

Administration-bond.

Section 256, Act X of 1865. Section 78, Act V of 1881. Section 6, Act VI of 1880.

(2) When the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person—

Section 78, Act V of 1881.

(a) the exception made by sub-section (1) in respect of a grant under section 241 shall not operate;

(b) the District Judge may demand a like bond from any person to whom probate is granted.

292. 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 person, his executors or administrators, who shall thereupon be entitled to sue on the said bond in his or their own name or names as if the same had been originally given

Assignment of administration-bond.

Section 257, Act X of 1865. Section 79, Act V of 1881.

to him or them instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustees for all persons interested, the full amount recoverable in respect of any breach thereof.

293. 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 intestate's death.

Time for grant of probate and administration. Section 258, Act X of 1865. Section 80, Act V of 1881.

the expiration of fourteen clear days from the day of the testator or intestate's death.

294. (1) Every District Judge, or District Delegate, shall file and preserve all original wills, of which probate or letters of administration with the will annexed may be granted by him, among the records of his Court, until some public registry for wills is established.

Filing of original wills of which probate or administration with will annexed granted. Section 259, Act X of 1865. Section 81, Act V of 1881.

(2) The Local Government shall make regulations for the preservation and inspection of the wills so filed.

295. 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 regular suit, according to the provisions of the Code of Civil Procedure, 1908, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who has appeared to oppose the grant shall be the defendant.

Procedure in contentious cases. Section 261, Act X of 1865. Section 83, Act V of 1881.

the form of a regular suit, according to the provisions of the Code of Civil Procedure, 1908, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who has appeared to oppose the grant shall be the defendant.

296. (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.

Surrender of revoked probate or letters of administration. Section 333, Act X of 1865. Section 157, Act V of 1881. Sections 10 and 17, Act VI of 1889.

(2) If such person wilfully and without reasonable cause omits so to deliver up the probate or letters, he shall be punishable with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to three months, or with both.

297. When a grant of probate or letters of administration is revoked, all payments *bona fide* made to any executor or administrator under such grant before the revocation thereof shall notwithstanding such revocation be a legal discharge to the person making the same; and the executor or administrator who has acted under any such revoked grant may retain and reimburse himself in respect of any payments made by him which the person to whom probate or letters of administration may afterwards be granted might have lawfully made.

Payment to executor or administrator before probate or administration revoked. Section 262, Act X of 1865. Section 84, Act V of 1881.

the revocation thereof shall notwithstanding such revocation be a legal discharge to the person making the same; and the executor or administrator who has acted under any such revoked grant may retain and reimburse himself in respect of any payments made by him which the person to whom probate or letters of administration may afterwards be granted might have lawfully made.

298. Notwithstanding anything hereinbefore contained, it shall, where the deceased was a Muhammadan, Buddhist or exempted person, or a Hindu, Sikh or Jaina to whom section 57 does not apply, 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.

Power to refuse letters of administration. Section 85, Act V of 1881.

299. Every order made by a District Judge by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court in accordance with the provisions of the Code of Civil Procedure, 1908, applicable to appeals.

Section 263, Act X of 1865, Section 86, Act V of 1881.

300. (1) The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

Section 264, Act X of 1865, Section 87, Act V of 1881.

(2) Except in cases to which section 57 applies, no High Court, in exercise of the concurrent jurisdiction hereby conferred over any local area beyond the limits of the towns of Calcutta, Madras and Bombay, and the province of Burma, shall, where the deceased is a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, receive applications for probate or letters of administration until the Local Government has, by a notification in the local official Gazette, authorised it so to do.

Section 2, Act V of 1881, Section 2, Schedule I, Act XXXVIII of 1920.

301. 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.

Section 264-A, Act X of 1865, Section 87 A, Act V of 1881, Schedule I, Act XVIII of 1919.

302. Where probate or letters of administration in respect of any estate has been granted or 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.

Section 264 B, Act X of 1865, Section 87-B, Act V of 1881, Schedule I, Act XVIII of 1919.

CHAPTER V.

OF EXECUTORS OF THEIR OWN WRONG.

303. A person who intermeddles with the estate of the deceased, or does any other act which belongs to the office of executor, while there is no rightful executor or administrator in existence, thereby makes himself an executor of his own wrong.

Section 265, Act X of 1865.

Exceptions.—(1) Intermeddling with the goods of the deceased for the purpose of preserving them or providing for his funeral or for the immediate necessities of his family or property, does not make an executor of his own wrong.

(2) Dealing in the ordinary course of business with goods of the deceased received from another does not make an executor of his own wrong.

Illustrations.

(i) A uses or gives away or sells some of the goods of the deceased, or takes them to satisfy his own debt or legacy or receives payment of the debts of the deceased. He is an executor of his own wrong.

(ii) A, having been appointed agent by the deceased in his lifetime to collect his debts and sell his goods, continues to do so after he has become aware of his death. He is an executor of his own wrong in respect of acts done after he has become aware of the death of the deceased.

(iii) A sues as executor of the deceased, not being such. He is an executor of his own wrong.

304. When a person has so acted as to become an executor of his own

Section 266.
Act X of
1865.

Liability of executor of his own wrong. he is answerable to the rightful executor or administrator, or to any creditor or legatee of the deceased, to the extent of the assets which may have come to his hands after deducting payments made to the rightful executor or administrator, and payments made in due course of administration.

CHAPTER VI.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

305. An executor or administrator has the same power to sue in respect

Section 267,
Act X of
1865.

In respect of causes of action surviving deceased and rents due at death. of all causes of action that survive the deceased, and may exercise the same power for the recovery of debts as the deceased had when living.

Section 83,
Act V of
1881.

306. All demands whatsoever and all rights to prosecute or defend any

Section 268,
Act X of
1865.

Demands and rights of action of or against deceased survive to and against executor or administrator. action or special 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 Indian 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.

Section 89,
Act V of
1881.

XLV of
1860.

Illustrations.

(i) A collision takes place on a railway in consequence of some neglect or default of an official, and a passenger is severely hurt, but not so as to cause death. He afterward dies without having brought any action. The cause of action does not survive.

(ii) A sues for divorce. A dies. The cause of action does not survive to his representative.

307. (1) Subject to the provisions of sub-section (2), an executor or administrator has power to

Section 269,
Act X of
1865.

Power of executor or administrator to dispose of property. dispose of the property of the deceased, vested in him

Section 90,
Act V of
1881.

under section 211, either wholly or in part, in such manner as he may think fit.

Section 90,
Act V of
1881, inserted
by section 14
of Act VI of
1889.

Illustrations.

(i) The deceased has made a specific bequest of part of his property. The executor not having assented to the bequest, sells the subject of it. The sale is valid.

(ii) The executor in the exercise of his discretion mortgages a part of the immoveable estate of the deceased. The mortgage is valid.

(2) If the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, the general power conferred by sub-section (1) shall be subject to the following restrictions and conditions, namely:—

(i) The power of an executor to dispose of immoveable 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 immoveable property specified in the order in a manner permitted by the order.

(ii) 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 immoveable property for the time being vested in him under section 211, or

(b) lease any such property for a term exceeding five years.

(iii) A disposal of property by an executor or administrator in contravention of clause (i) or clause (ii), as the case may be, is voidable at the instance of any other person interested in the property.

(3) Before any probate or letters of administration is or are granted in such a case, there shall be endorsed thereon or annexed thereto a copy of sub-section (1) and clauses (i) and (iii) of sub-section (2) or of sub-section (1) and clauses (ii) and (iii) of sub-section (2), as the case may be.

(4) A probate or letters of administration shall not be rendered invalid by reason of the endorsement or annexure required by sub-section (3) not having been made thereon or attached thereto, nor 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.

308. An executor or administrator may, in addition to, and not in derogation of, any other powers of expenditure lawfully exercisable by him, incur expenditure—

Section 269
A, Act X
of 1865.
Section 90-
A, Act V
of 1881.
Schedule I,
Act XVIII
of 1919.

(a) on such acts as may be necessary for the proper care or 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 proper in the case of such property.

309. An executor or administrator shall not be entitled to receive or retain any commission or agency charges at a higher rate than that for the time being fixed in respect of the Administrator General by or under the Administrator General's Act, 1913.

Section 269
B, Act X
of 1865.
Section 90-
B, Act V
of 1881.
Schedule I,
Act XVIII
of 1919.
III of 1913.

310. If any executor or administrator purchases, Section 270, Act X of 1865.
 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.

311. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary, be exercised by any one of them who has proved the will or taken out administration. Section 271, Act X of 1865. Section 92, Act V of 1881.

Illustrations.

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

(ii) One has power to surrender a lease.

(iii) One has power to sell the property of the deceased, whether moveable or immoveable.

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

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

(vi) 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.

312. Upon the death of one or more of several executors or administrators, in the absence of any direction to the contrary in the will or grant of letters of administration, all the powers of the office become vested in the survivors or survivor. Section 272, Act X of 1865. Section 93, Act V of 1881.

313. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator. Section 273, Act X of 1865. Section 94, Act V of 1881.

314. An administrator during minority has all the powers of an ordinary administrator. Section 274, Act X of 1865. Section 95, Act V of 1881.

315. When a grant of probate or letters of administration has been made to a married woman, she has all the powers of an ordinary executor or administrator. Section 275, Act X of 1865. Section 96, Act V of 1881.

CHAPTER VII.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR. Section 276, Act X of 1865.

316. 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. Section 67, Act V of 1881.

317. (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 appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the Section 277, Act X of 1865. Section 98, Act V of 1881. Section 7, Act VI of 1889. Section 15, Act VI of 1889.

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 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 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 section 176 of the Indian Penal Code.

XLV of 1860.

(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.

318. In all cases where a grant has been made of probate or letters of administration intended to have effect throughout the whole of British India, the executor or administrator shall include in the inventory of the effects of the deceased all his moveable and immoveable property situate in British India, and the value of such property situate in each province shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within British India.

319. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

As to property of, and debts owing to, deceased.

320. 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, shall be paid before all debts.

Expenses to be paid before all debts.

321. 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, shall be paid next after the funeral expenses and death-bed charges.

Expenses to be paid next after such expenses.

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

Wages for certain services to be next paid, and then other debts.

323. Save as aforesaid, no creditor shall have Section 262, Act X of 1865. a right of priority over another; but the executor Section 104, Act V of 1881. 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.

324. (1) If the domicile of the deceased was Section 263, Act X of 1865. not in British India, the application of his moveable property to the payment of his debts is to be regulated Section 9, Act VI of 1889. by the law of British India.

(2) No creditor who has received payment of a part of his debt by virtue of sub-section (1) Section 264, Act X of 1865. shall be entitled to share in the proceeds of the immoveable estate of the deceased unless he brings such payment into account for the benefit of the other creditors.

(3) This section shall not apply where the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person.

Illustration.

A dies, having his domicile in a country where instruments under seal have priority over instruments not under seal leaving moveable property to the value of 5,000 rupees, and immoveable property to the value of 10,000 rupees, debts on instruments under seal to the amount of 10,000 rupees, and debts on instruments not under seal to the same amount. The creditors holding instruments under seal receive half of their debts out of the proceeds of the moveable estate. The proceeds of the immoveable estate are to be applied in payment of the debts on instruments not under seal until one-half of such debts has been discharged. This will leave 5,000 rupees which are to be distributed rateably amongst all the creditors without distinction, in proportion to the amount which may remain due to them.

325. Debts of every description must be paid Section 265, Act X of 1865. before any legacy. Section 103, Act V of 1881.

326. If the estate of the deceased is subject Section 266, Act X of 1865. 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. Section 104, Act V of 1881.

327. If the assets, after payment of debts, Section 267, Act X of 1865. 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, or to retain any money on account of a legacy to himself or to any person for whom he is a trustee. Section 107, Act V of 1881.

328. Where there is a specific legacy, and the Section 268, Act X of 1865. assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered Section 108, Act V of 1881. to the legatee without any abatement.

329. Where there is a demonstrative legacy, Section 269, Act X of 1865. and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his Section 109, Act V of 1881.

legacy out of the 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 general assets as for a legacy of the amount of such unpaid remainder.

330. 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.

Section 290,
Act X of
1865.
Section 110,
Act V of
1881.

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 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

331. 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.

Section 291,
Act X of
1865.
Section 111,
Act V of
1881.

CHAPTER VIII:

OF ASSENT TO A LEGACY BY EXECUTOR OR ADMINISTRATOR.

332. The assent of the executor or administrator is necessary to complete a legatee's title to his legacy.

Section 292,
Act X of
1865.
Section 112,
Act V of
1881.

Illustrations.

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

(ii) 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 or administrator.

333. (1) The assent of the executor or administrator to a specific bequest shall be sufficient to divest his interest as executor or administrator 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.

Section 293,
Act X of
1865.
Section 113,
Act V of
1881.

(2) This assent may be verbal, and it may be either express or implied from the conduct of the executor or administrator.

Section 148,
Act V of
1881.

Illustrations.

(i) 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.

(ii) 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.

(iii) 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.

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

(v) 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.

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

Section 294,
Act X of
1865.
Section 114,
Act V of
1881.
Section 148,
Act V of
1881.

Illustrations.

(i) 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.

(ii) 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.

335. (1) When the executor or administrator 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 expressed or implied.

Section 295,
Act X of
1865.
Section 115,
Act V of
1881.
Section 148,
Act V of
1881.

(2) 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 or administrator.

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.

336. The assent of the executor or administrator to a legacy gives effect to it from the death of the testator.

Section 296,
Act X of
1865.
Section 116,
Act V of
1881.

Illustrations.

(i) 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.

Section 148,
Act V of
1881.

(ii) 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.

337. An executor or administrator is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Section 297,
Act X of
1865.
Section 117,
Act V of
1881.

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.

Section 148,
Act V of
1881.

CHAPTER IX.

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

338. Where an annuity is given by a 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.

Section 298,
Act X of
1865.
Section 118,
Act V of
1881.

339. Where there is a direction that the annuity shall be paid quarterly 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 or administrator thinks fit, be paid when due, but the executor or administrator shall not be bound to pay it till the end of the year.

Section 299,
Act X of
1865.
Section 119,
Act V of
1881.
Section 148,
Act V of
1881.

340. (1) 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.

Section 300, Act X of 1865, Section 120, Act V of 1881.

(2) 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.

341. 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 authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Section 301, Act X of 1865, Section 121, Act V of 1881.

342. (1) Where a general legacy is given to be paid at a future time, the executor or administrator shall invest a sum sufficient to meet it in securities of the kind mentioned in section 341.

Section 302, Act X of 1865, Sections 122 and 148, Act V of 1881.

(2) The intermediate interest shall form part of the residue of the testator's estate.

343. Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a Government 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 securities of the kind mentioned in section 341.

Section 303, Act X of 1865, Section 123, Act V of 1881.

344. Where a bequest is contingent, the executor or administrator 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.

Section 304, Act X of 1865, Sections 124 and 148, Act V of 1881.

345. (1) Where the testator has bequeathed the residue of his estate to a person for life without any direction to invest it in any particular securities, so much thereof as is not at the time of the testator's decease invested in securities of the kind mentioned in section 341 shall be converted into money and invested in such securities.

Section 305, Act X of 1865.

(2) This section shall not apply if the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person.

346. 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.

347. Such conversion and investment as are contemplated by sections 345 and 346 shall be made at such times and in such manner as the executor or administrator thinks fit; and, until such conversion and investment are 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 four per cent. per annum upon the market-value (to be computed as at the date of the testator's death) of such part of the fund as has not been so invested :

Provided that the rate of interest prior to completion of investment shall be six per cent. per annum when the testator was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person.

348. (1) Where, by the terms of a bequest, the legatee 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 is a ward of the Court of Wards.

(2) If the legatee is a ward of the Court of Wards, the legacy shall be paid to the Court of Wards to his account.

(3) Such payment into the Court of the District Judge, or to the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid.

(4) Money when paid in under this section 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.

CHAPTER XI.

OF THE PRODUCE AND INTEREST OF LEGACIES.

349. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Exception.—A specific bequest, contingent 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.

Illustrations.

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

(ii) 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.

(iii) 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.

350. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Residuary legatee's title to produce of residuary fund. *Section 310, Act X of 1865, Section 129, Act V of 1881.*

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.

(i) 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.

(ii) 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.

351. 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.

Section 311, Act X of 1865, Section 130, Act V of 1881.

Exception.—(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.

352. 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.

Section 312, Act X of 1865, Section 131, Act V of 1881.

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.

353. The rate of interest shall be four per cent. per annum in all cases except when the testator was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, in which case it shall be six per cent. per annum.

Section 313, Act X of 1865, Section 132, Act V of 1881.

354. No interest is payable on the arrears of Section 314,
 an annuity within the first ^{Act X of} 1865,
 year from the death of the ^{Section 133,} 1881,
 testator, although a period ^{Act V of} 1881,
 earlier than the expiration
 of that year may have been fixed by the will for
 making the first payment of the annuity.

355. Where a sum of money is directed to be ^{Section 315,}
 invested to produce an an- ^{Act X of} 1865,
 nuity, interest is payable on ^{Section 134}
 it from the death of the ^{Act V of} 1881,
 testator.

CHAPTER XII.

OF THE REFUNDING OF LEGACIES.

356. When an executor or administrator has ^{Section 316,}
 paid a legacy under the ^{Act X of} 1865,
 order of a Court, he is ^{Sections 135}
 entitled to call upon the ^{and 148,}
 legatee to refund in the event of the assets prov- ^{Act V of} 1881,
 ing insufficient to pay all the legacies.

357. When an executor or administrator has ^{Section 317,}
 voluntarily paid a legacy, he ^{Act X of} 1865,
 cannot call upon a legatee to ^{Sections 136}
 refund in the event of the ^{and 148,}
 assets proving insufficient to pay all the legacies. ^{Act V of} 1881.

358. When the time prescribed by the will ^{Section 318,}
 for the performance of a ^{Act X of} 1865,
 condition has elapsed, with- ^{Sections 137}
 out the condition having ^{and 148,}
 been performed, and the ^{Act V of} 1881,
 executor or administrator
 has thereupon, without
 fraud, distributed the assets; in such case, if further
 time has been allowed under section 137 for the
 performance of the condition, and the condition
 has been performed accordingly, the legacy
 cannot be claimed from the executor or adminis-
 trator, but those to whom he has paid it are liable
 to refund the amount.

359. When the executor or administrator has ^{Section 319,}
 paid away the assets in ^{Act X of} 1865,
 compellable to refund legacies, and he is after- ^{Sections 138,}
 wards obliged to discharge ^{and 148,}
 a debt of which he had no previous notice, he is ^{Act V of} 1881,
 entitled to call upon each legatee to refund in
 proportion.

360. Where an executor or administrator has ^{Section 320,}
 given such notices as the ^{Act X of} 1865,
 High Court may, by any ^{Section 139,}
 general rule, prescribe or, if no such rule has ^{Act V of} 1881,
 been made, as the High Court would give in an
 administration-suit, for creditors and others to
 send in to him their claims against the estate
 of the deceased, he shall, at the expira-
 tion 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 shall not have had notice at the time of
 such distribution :

Provided that 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.

361. 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 or administrator was voluntary or not.

Section 321, Act X of 1865, Sections 140 and 148, Act V of 1881.

362. 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 section 361, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

Section 322, Act X of 1865, Section 141, Act V of 1881.

363. 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 or administrator if he is solvent; but if the executor or administrator is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

Section 323, Act X of 1865, Sections 142 and 148, Act V of 1881.

364. The refunding of one legatee to another shall not exceed the sum by which the satisfied legatee ought to have been reduced if the estate had been properly administered.

Section 324, Act X of 1865, Section 143, Act V of 1881.

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.

365. The refunding shall in all cases be without interest.

Section 325, Act X of 1865, Section 144, Act V of 1881.

366. 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.

Section 326, Act X of 1865, Section 145, Act V of 1881.

367. Where a person not having his domicile in British India has died leaving assets both in British India and in the country in which he had his domicile at the time of his death, and there has been a grant of probate or

Section 326, A, Act X of 1865, Section 145, A, Act V of 1881, Sections 9 and 16, Act II of 1890.

letters of administration in British India 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 British India, after having given such notices as are mentioned in section 300, and after having discharged, at the expiration of the time therein limited, 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 British India 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.

368. When an executor or administrator mis-Section 327,
applies the estate of the Act X of
deceased, or subjects it to 1865.
loss or damage, he is liable Section 146,
to make good the loss or damage so occasioned. Act V of 1881.

Illustrations.

(i) The executor pays out of the estate an unfounded claim. He is liable to make good the loss.

(ii) 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.

(iii) 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.

369. When an executor or administrator occa-Section 328,
sions a loss to the estate Act X of
by neglecting to get in any 1865.
part of the property of the Section 147,
deceased, he is liable to Act V of 1881.
make good the amount.

Illustrations.

(i) 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.

(ii) The executor neglects to sue for a debt till the debtor is able to plead that the claim is barred by limitation and the debt is thereby lost to the estate. The executor is liable to make good the amount.

PART X.

SUCCESSION CERTIFICATES.

370. (1) A succession certificate (hereinafter Section 1 (4),
in this Part referred to as Act VII of
a certificate) shall not be 1889.
Restriction on grant of a certificate shall not be
certificates under this Part. granted under this Part
with respect to any debt
or security to which a right is required by section
212 or section 213 to be established by letters of
administration or probate :

Provided that nothing contained in this section shall be deemed to prevent the grant of a certificate to any person claiming to be entitled to the effects of a deceased Indian Christian, or to any part thereof, with respect to any debt or security, by reason that a right thereto can be established by letters of administration under this Act.

Section 5,
Act VII of
1931.

(2) For the purposes of this Part, " security " means—

Section 3(2),
Act VII of
1939.

- (a) any promissory note, debenture, stock or other security of the Government of India or of a Local Government ;
- (b) any bond, debenture, or annuity charged by Act of Parliament on the revenues of India ;
- (c) any stock or debenture of, or share in, a company or other incorporated institution ;
- (d) any debenture or other security for money issued by, or on behalf of, a local authority ;
- (e) any other security which the Governor General in Council may, by notification in the Gazette of India, declare to be a security for the purposes of this Part.

371. The District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death, or, if at that time he had no fixed place of residence, the District Judge, within whose jurisdiction any part of the property of the deceased may be found, may grant a certificate under this Part.

372. (1) Application for such a certificate shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure, 1908, for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely :—

Section 6,
Act VII of
1889.

Act of 1908.

- (a) the time of the death of the deceased ;
- (b) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Judge to which the application is made, then the property of the deceased within those limits ;
- (c) the family or other near relatives of the deceased and their respective residences ;
- (d) the right in which the petitioner claims ;
- (e) the absence of any impediment under section 370 or under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted ; and
- (f) the debts and securities in respect of which the certificate is applied for.

(2) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that person shall be deemed to have committed an offence under section 193 of the Indian Penal Code.

Act of 1860.

373. (1) If the District Judge is satisfied that Section 7, Act VII of 1889. there is ground for entertaining the application, he shall fix a day for the hearing thereof and cause notice of the application and of the day fixed for the hearing —

- (a) to be served on any person to whom, in the opinion of the Judge, special notice of the application should be given, and
- (b) to be posted on some conspicuous part of the court-house and published in such other manner, if any, as the Judge, subject to any rules made by the High Court in this behalf, thinks fit,

and upon the day fixed, or as soon thereafter as may be practicable, shall proceed to decide in a summary manner the right to the certificate.

(2) When the Judge decides the right thereto to belong to the applicant, the Judge shall make an order for the grant of the certificate to him.

(3) If the Judge cannot decide the right to the certificate without determining questions of law or fact which seem to him to be too intricate and difficult for determination in a summary proceeding, he may nevertheless grant a certificate to the applicant if he appears to be the person having *prima facie* the best title thereto.

(4) When there are more applicants than one for a certificate, and it appears to the Judge that more than one of such applicants are interested in the estate of the deceased, the Judge may, in deciding to whom the certificate is to be granted, have regard to the extent of interest and the fitness in other respects of the applicants.

374. When the District Judge grants a certificate, he shall therein specify Section 8, Act VII of 1889. the debts and securities set forth in the application for the certificate, and may thereby empower the person to whom the certificate is granted—

- (a) to receive interest or dividends on, or
- (b) to negotiate or transfer, or
- (c) both to receive interest or dividends on, and to negotiate or transfer,

the securities or any of them.

375. (1) The District Judge shall in any case Section 9, Act VII of 1889. in which he proposes to proceed under sub-section (3) or sub-section (4) of section 373, and may, in any other case, require, as a condition precedent to the granting of a certificate, that the person to whom he proposes to make the grant shall give to the Judge a bond with one or more surety or sureties, or other sufficient security, for rendering an account of debts and securities received by him and for indemnity of persons who may be entitled to the whole or any part of those debts and securities.

(2) The Judge may, on application made by petition and on cause shown to his satisfaction, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise, as he thinks fit, assign the bond or other security to some proper person, and that person shall thereupon be entitled to sue thereon in his own name as if it had been originally given to him instead of to the Judge of the Court, and to recover, as trustee for all persons interested, such amount as may be recoverable thereunder.

376. (1) A District Judge may, on the application of the holder of a certificate under this Part, extend the certificate to any debt or security not originally specified therein, and every such extension shall have the same effect as if the debt or security to which the certificate is extended had been originally specified therein.

Section 10,
Act VII of
1889.

(2) Upon the extension of a certificate, powers with respect to the receiving of interest or dividends on, or the negotiation or transfer of, any security to which the certificate has been extended may be conferred, and a bond or further bond or other security for the purposes mentioned in section 375 may be required, in the same manner as upon the original grant of a certificate.

377. Certificates shall be granted and extensions of certificates shall be made, as nearly as circumstances admit, in the forms set forth in Schedule VIII.

Section 11,
Act VII of
1889.

378. Where a District Judge has not conferred on the holder of a certificate any power with respect to a security specified in the certificate, or has only empowered him to receive interest or dividends on, or to negotiate or transfer, the security, the Judge may, on application made by petition and on cause shown to his satisfaction, amend the certificate by conferring any of the powers mentioned in section 374 or by substituting any one for any other of those powers.

Section 12,
Act VII of
1889.

379. (1) Every application for a certificate or for the extension of a certificate shall be accompanied by a deposit of a sum equal to the fee payable under the Court-fees Act, 1870, in respect of the certificate or extension applied for.

Section 14,
Act VII of
1889.

(2) If the application is allowed, the sum deposited by the applicant shall be expended, under the direction of the Judge, in the purchase of the stamp to be used for denoting the fee payable as aforesaid.

(3) Any sum received under sub-section (1) and not expended under sub-section (2) shall be refunded to the person who deposited it.

380. A certificate under this Part shall have effect throughout the whole of British India.

Section 15,
Act VII of
1889.

381. Subject to the provisions of this Part, the ^{Section 16,} certificate of the District ^{Act VII of} Judge shall, with respect ^{1889.} to the debts and securities specified therein, be conclusive as against the persons owing such debts or liable on such securities, and shall, notwithstanding any contravention of section 370, or other defect, afford full indemnity to all such persons as regards all payments made, or dealings had, in good faith in respect of such debts or securities to or with the person to whom the certificate was granted.

382. Where a certificate in the form, as nearly ^{Section 17,} as circumstances admit, ^{Act VII of} of Schedule VIII has been ^{1889.} granted to a resident within a Foreign State by the British representative accredited to the State, or where a certificate so granted has been extended in such form by such representative, the certificate shall, when stamped in accordance with the provisions of the Court-fees Act, 1870, with respect to ^{VII of 1870.} certificates under this Part, have the same effect in British India as a certificate granted or extended under this Part.

383. A certificate granted under this Part may ^{Section 18,} be revoked for any of ^{Act VII of} the following causes, ^{1889.} namely :—

- (a) that the proceedings to obtain the certificate were defective in substance ;
- (b) that the certificate was obtained fraudulently by the making of a false suggestion, or by the concealment from the Court of something material to the case ;
- (c) that the certificate was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently ;
- (d) that the certificate has become useless and inoperative through circumstances ;
- (e) that a decree or order made by a competent Court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked.

384. (1) Subject to the other provisions of ^{Section 19,} this Part, an appeal shall ^{Act VII of} lie to the High Court from ^{1889.} an order of a District Judge granting, refusing or revoking a certificate under this Part, and the High Court may, if it thinks fit, by its order on the appeal, declare the person to whom the certificate should be granted and direct the District Judge, on application being made therefor, to grant it accordingly, in supersession of the certificate, if any, already granted.

(2) An appeal under sub-section (1) must be preferred within the time allowed for an appeal under the Code of Civil Procedure, 1908. ^{V of 1908.}

(3) Subject to the provisions of sub-section (1) and to the provisions as to reference to and revision by the High Court and as to review of judgment of the Code of Civil Procedure, 1908, ^{V of 1908.}

as applied by section 141 of that Code, an order of a District Judge under this Part shall be final.

385. Save as provided by this Act, a certificate granted thereunder in respect of any of the effects of a deceased person shall be invalid if there has been a previous grant of such a certificate or of probate or letters of administration in respect of the estate of the deceased person and if such previous grant is in force.

Section 20, Act VII of 1889.

Effect on certificate of previous certificate, probate or letters of administration.

386. Where a certificate under this Part has been superseded or is invalid by reason of the certificate having been revoked under section 383, or by reason of the grant of a certificate to a person named in an appellate order under section 384, or by reason of a certificate having been previously granted, or for any other cause, all payments made, or dealings had, as regards debts and securities specified in the superseded or invalid certificate, to or with the holder of that certificate in ignorance of its supersession or invalidity, shall be held good against claims under any other certificate.

Section 22, Act VII of 1889.

Validation of certain payments made in good faith to holder of invalid certificate.

387. No decision under this Part upon any question of right between any parties shall be held to bar the trial of the same question in any suit or in any other proceeding between the same parties, and nothing in this Part shall be construed to affect the liability of any person who may receive the whole or any part of any debt or security, or any interest or dividend on any security, to account therefor to the person lawfully entitled thereto.

Section 25, Act VII of 1889.

Effect of decisions under this Act, and liability of holder of certificate thereunder.

388. (1) The Local Government may, by notification in the local official Gazette, invest any Court inferior in grade to a District Judge with power to exercise the functions of a District Judge under this Part.

Section 26, Act VII of 1889.

Investiture of inferior Courts with jurisdiction of District Court for purposes of this Act.

(2) Any inferior Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Judge in the exercise of all the powers conferred by this Part upon the District Judge, and the provisions of this Part relating to the District Judge shall apply to such an inferior Court as if it were a District Judge :

Provided that an appeal from any such order of an inferior Court as is mentioned in sub-section (1) of section 384 shall lie to the District Judge, and not to the High Court, and that the District Judge may if he thinks fit, by his order on the appeal, make any such declaration and direction as that sub-section authorises the High Court to make by its order on an appeal from an order of a District Judge.

(3) An order of a District Judge on an appeal from an order of an inferior Court under the last foregoing sub-section shall, subject to the provisions as to reference to and revision by the High Court and as to review of judgment of the Code

of Civil Procedure, 1908, as applied by section 141 V of 1908, of that Code, be final.

(4) The District Judge may withdraw any proceedings under this Part from an inferior Court and may either himself dispose of them or transfer them to another such Court established within the local limits of the jurisdiction of the District Judge and having authority to dispose of the proceedings.

(5) A notification under sub-section (1) may specify any inferior Court specially or any class of such Courts in any local area.

(6) Any Civil Court which for any of the purposes of any enactment is subordinate to, or subject to the control of, a District Judge shall for the purposes of this section be deemed to be a Court inferior in grade to a District Judge.

389. (1) When a certificate under this Part ^{Section 27, Act VII of 1889.} has been superseded or is invalid from any of the causes mentioned in section 386, the holder thereof shall, on the requisition of the Court which granted it, deliver it up to that Court.

(2) If he wilfully and without reasonable cause omits so to deliver it up, he shall be punishable with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to three months, or with both.

390. Notwithstanding anything in Bombay Regulation No. VIII of 1827, ^{Section 28, Act VII of 1889.} the provisions of section 370, sub-section (2), section 372, sub-section (1), clause (f), and sections 374, 375, 376, 377, 378, 379, 381, 383, 384, 387, 388 and 389 with respect to certificates under this Part and applications therefor, and of section 317 with respect to the exhibition of inventories and accounts by executors and administrators, shall, so far as they can be made applicable, apply, respectively, to certificates granted under that Regulation, and applications made for certificates thereunder, after the 1st day of May, 1889, and to the exhibition of inventories and accounts by the holders of such certificates so granted.

PART XI.

MISCELLANEOUS.

391. Nothing in Part VIII, Part IX or Part ^{Section 149, Act V of 1881.} X shall —
 (i) validate any testamentary disposition which would otherwise have been invalid ;
 (ii) invalidate any such disposition which would otherwise have been valid ;
 (iii) deprive any person of any right of maintenance to which he would otherwise have been entitled ; or
 (iv) affect the Administrator General's Act, III of 1913.

392. The enactments mentioned in Schedule IX ^{Repeals.} are hereby repealed to the extent specified in the third column thereof.

(See section 28.)

The diagram illustrates the following relationships and degrees:

- Great Grandfather's Father.** (Degree 4) is connected to **Great Grandfather.** (Degree 3) and **Great Great Uncle.** (Degree 5).
- Great Grandfather.** (Degree 3) is connected to **Grandfather.** (Degree 2) and **Great Uncle.** (Degree 4).
- Grandfather.** (Degree 2) is connected to **Father.** (Degree 1) and **Uncle.** (Degree 3).
- Father.** (Degree 1) is connected to **THE PERSON WHOSE RELATIVES ARE TO BE RECKONED.** (Degree 0) and **Brother.** (Degree 2).
- Uncle.** (Degree 3) is connected to **Great Uncle's son.** (Degree 5) and **Cousin-german.** (Degree 4).
- Great Uncle's son.** (Degree 5) is connected to **Second Cousin.** (Degree 6).
- Brother.** (Degree 2) is connected to **Nephew.** (Degree 3) and **Son of the Cousin-german.** (Degree 5).
- Cousin-german.** (Degree 4) is connected to **Son of the Cousin-german.** (Degree 5).
- Second Cousin.** (Degree 6) is connected to **Grandson of the Cousin-german.** (Degree 7).
- THE PERSON WHOSE RELATIVES ARE TO BE RECKONED.** (Degree 0) is connected to **Son.** (Degree 1).
- Son.** (Degree 1) is connected to **Grandson.** (Degree 2).
- Grandson.** (Degree 2) is connected to **Great Grandson.** (Degree 3).
- Nephew.** (Degree 3) is connected to **Son of the Nephew or Brother's Grandson.** (Degree 4).
- Son of the Cousin-german.** (Degree 5) is connected to **Son of the Nephew or Brother's Grandson.** (Degree 4).
- Son of the Nephew or Brother's Grandson.** (Degree 4) is connected to **Grandson of the Cousin-german.** (Degree 7).

SCHEDULE II.

PART I.

(*See section 55.*)

(1) Brothers and sisters, and the children or lineal descendants of such of them as shall have predeceased the intestate.

(2) Grandfather and grandmother.

(3) Grandfather's sons and daughters, and the lineal descendants of such of them as have predeceased the intestate.

(4) Great-grandfather and great-grandmother.

(5) Great-grandfather's sons and daughters and the lineal descendants of such of them as have predeceased the intestate.

PART II.

(*See section 56.*)

(1) Father and mother.

(2) Brothers and sisters and the lineal descendants of such of them as have predeceased the intestate.

(3) Paternal grandfather and paternal grandmother.

(4) Children of the paternal grandfather, and the lineal descendants of such of them as have predeceased the intestate.

(5) Paternal grandfather's father and mother.

(6) Paternal grandfather's father's children, and the lineal descendants of such of them as have predeceased the intestate.

(7) Brothers and sisters by the mother's side and the lineal descendants of such of them as have predeceased the intestate.

(8) Maternal grandfather and maternal grandmother.

(9) Children of the maternal grandfather, and the lineal descendants of such of them as have predeceased the intestate.

(10) Son's widow, if she has not re-married at or before the death of the intestate.

(11) Brother's widow, if she has not re-married at or before the death of the intestate.

(12) Paternal grandfather's son's widow, if she has not re-married at or before the death of the intestate.

(13) Maternal grandfather's son's widow, if she has not re-married at or before the death of the intestate.

(14) Widowers of the intestate's deceased daughters, if they have not re-married at or before the death of the intestate.

(15) Maternal grandfather's father and mother.

(16) Children of the maternal grandfather's father, and the lineal descendants of such of them as have predeceased the intestate.

(17) Paternal grandmother's father and mother.

(18) Children of the paternal grandmother's father, and the lineal descendants of such of them as have predeceased the intestate.

SCHEDULE III.

(See section 57.)

PROVISIONS OF PART VI APPLICABLE TO CERTAIN WILLS AND CODICILS DESCRIBED IN SECTION 57.

Sections 59, 61, 62, 63, 64, 68, 70, 71, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 95, 96, 98, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189 and 190.

Restrictions and modifications in application of foregoing sections.

1. Nothing therein contained shall authorise a Section 3, testator to bequeath property which he could not ^{Act XXI of 1870.} have alienated *inter vivos*, or to deprive any ^{Section 154,} persons of any right of maintenance of which, but ^{Act V of 1881.} for the application of these sections, he could not deprive them by will.

2. Nothing therein contained shall authorise any Hindu, Buddhist, Sikh or Jaina, to create in property any interest which he could not have created before the first day of September, 1870.

3. Nothing therein contained shall affect any law of adoption or intestate succession.

4. *In applying section 70 the words "than by marriage or" shall be omitted.*

5. In applying any of the following sections, ^{Section 6, Act XXI of 1870.} namely, sections seventy-five, seventy-six, one hundred and five, one hundred and nine, one hundred and eleven, one hundred and twelve, one hundred and thirteen, one hundred and fourteen, one hundred and fifteen, and one hundred and sixteen to such wills and codicils the words "son," "sons," "child," and "children" shall be deemed to include an adopted child; and the word "grand-children" shall be deemed to include the children, whether adopted or natural-born, of a child whether adopted or natural-born; and the expression "daughter-in-law" shall be deemed to include the wife of an adopted son.

SCHEDULE IV.

[See section 274 (2).]

FORM OF CERTIFICATE.

I, A. B., Registrar (*or as the case may be*) of the High Court of Judicature at _____ (*or as the case may be*) hereby certify that on the _____ day of _____, the High Court of Judicature at _____ (*or as the case may be*) 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 British India.

SCHEDULE V.

[See section 284 (4).]

FORM OF CAVEAT.

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 _____.

SCHEDULE VI.

(See section 289.)

FORM OF PROBATE.

I, _____, Judge of the District of _____ [*or Delegate appointed for granting probate or letters of administration in (here insert the limits of the Delegate's jurisdiction)*], hereby 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 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 same date, or within such further time as the Court may, from time to time, appoint.

SCHEDULE VII.

(See section 290.)

FORM OF LETTERS OF ADMINISTRATION.

I, _____, Judge of the District of _____ [*or Delegate appointed for granting probate or letters of administration in (here insert the limits of the Delegate's 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 property and credits of _____, late of _____, deceased, were granted to _____, 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 same date, or within such further time as the Court may, from time to time, appoint.

SCHEDULE VIII.

(See section 377.)

FORMS OF CERTIFICATE AND EXTENDED CERTIFICATE.

In the Court of

To A B.

Whereas you applied on the _____ day of _____ Schedule II
for a certificate under Part X of the Indian Act VII of
Succession Act, 1925, in respect of the following 1869.
debts and securities, namely:—

Debts.

Serial number.	Name of debtor.	Amount of debt, including interest, on date of appli- cation for certificate.	Description and date of instru- ment, if any, by which the debt is secured.

Securities.

Serial number.	DESCRIPTION.			Market-value of security on date of application for certificate.
	Distinguishing number or letter of security.	Name, title or class of security.	Amount or par value of security.	

This certificate is accordingly granted to you and empowers you to collect those debts [and] [to receive] [interest] [dividends] [on] [to negotiate] [to transfer] [those securities].

Dated this day of

District Judge

In the Court of

On the application of *A. B.* made to me on the
day of , I hereby extend this certi-
ficate to the following debts and securities,
namely :—

Debts.

Serial number.	Name of debtor.	Amount of debt, including interest, on date of appli- cation for extension.	Description and date of instru- ment, if any, by which the debt is secured.

Securities.

Serial num- ber.	DESCRIPTION.			Market-value of security on date of application for extension.
	Distin- guishing number or letter of security.	Name, title or class of security.	Amount or par value of security.	

This extension empowers *A. B.* to collect those
debts [and] [to receive] [interest] [dividends]
[on] [to negotiate] [to transfer] [those securities].
Dated this day of

District Judge.

SCHEDULE IX.

(See section 392.)

ENACTMENTS REPEALED.

Number and Year.	Short title.	Extent of repeal.
XXV of 1841	The Succession (Property Protection) Act, 1841.	So much as has not already been repealed.
X of 1865	The Indian Succession Act, 1865.	So much as has not already been repealed.
XXI of 1865	The Parsi Intestate Succession Act, 1865.	The whole Act.
XXI of 1870	The Hindu Wills Act, 1870.	So much as has not already been repealed.
III of 1874	The Married Woman's Property Act, 1874.	The last paragraph of section 2.
V of 1881	The Probate and Administration Act, 1881.	So much as has not already been repealed.
VI of 1881	The District Delegates Act, 1881.	The whole Act.
VI of 1889	The Probate and Administration Act, 1889.	So much as has not already been repealed.
VII of 1889	The Succession Certificate Act, 1889.	So much as is unrepealed, except section 13.
II of 1890	The Probate and Administration Act, 1890.	So much as has not already been repealed.
VII of 1901	The Native Christian Administration of Estates Act, 1901.	So much as has not already been repealed.
VIII of 1903	The Probate and Administration Act, 1903.	So much as has not already been repealed.
XVIII of 1919	The Repealing and Amending Act, 1919.	So much of Schedule I as refers to Act X of 1865 or to Act V of 1881.
XXXVIII of 1920.	The Devolution Act, 1920.	So much of Schedule I as refers to Act X of 1865 or to Act V of 1881.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

Report of the Joint Committee on the Bill
to consolidate the law applicable to
intestate and testamentary succession in
British India, with the Bill as amended.
