

## Indian Succession Act, 1925

### Chapter 4 - Of the Practice in Granting and Revoking Probates and Letters of Administration

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(1) The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

(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,<sup>1</sup>[\*\*\*] 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 State Government has, by a notification in the Official Gazette, authorised it so to do.

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1. The words "and the province of Burma" omitted by the A.O. 1937.

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#### Section 264 - Jurisdiction of District Judge in granting and revoking probates, etc.

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(1) The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

(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,<sup>1</sup>[\*\*\*] 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 State Government has, by a notification in the Official Gazette, authorised it so to do.

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1. The words "and the province of Burma" omitted by the A.O. 1937.

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#### Section 265 - Power to appoint Delegate of District Judge to deal with non-contentious cases

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(1) The High Court may appoint such judicial officers within any districts 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:

Provided that, in the case of High Courts not established by Royal Charter such appointments shall not be without the previous sanction of the State Government.

(2) Persons so appointed shall be called "District Delegates".

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#### Section 266 - District Judge's powers as to grant of probate and administration

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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.

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#### Section 267 - District Judge may order person to produce testamentary papers

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(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.

(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, 1860 (45 of 1860), 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.

(4) The costs of the proceeding shall be in the discretion of the Judge.

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### **Section 268 - Proceedings of District Judge's Court in relation to probate and administration**

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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 (5 of 1908).

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### **Section 269 - When and how District Judge to interfere for protection of property**

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(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 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.

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### **Section 270 - When probate or administration may be granted by District Judge**

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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, 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.

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### **Section 271 - Disposal of application made to Judge of district in which deceased had no fixed abode**

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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.

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### **Section 272 - Probate and letters of administration may be granted by Delegate**

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Probate and letters of administration may, upon application for that purpose of 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.

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## Section 273 - Conclusiveness of probate or letters of administration

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Probate or letters of administration shall have effect over all the property and estate, moveable or immoveable, of the deceased, throughout the State 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:

Provided that probates and letters of administration granted-

(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 State does not exceed ten thousand rupees,

shall, unless otherwise directed by the grant, have like effect throughout [1](#) [the other States [2](#) [\* \* \*]

[3](#) [The proviso to this section shall apply in [4](#) [India] [5](#) after the separation of Burma and Aden from India to probates and letters of administration granted in Burma and Aden before the date of the separation, or after that date in proceedings which were pending at that date.]

[6](#) [The proviso shall also apply in [4](#) [India] [7](#) [\* \* \*] [8](#) after the separation of Pakistan from India to probates and letters of administration granted before the date of the separation, or after that date in proceedings pending at that date, in any of the territories which on that date constituted Pakistan.]

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1. Substituted by the A.O. 1948, for "the whole of British India".
  2. The words "of India" omitted by the A.O. 1950.
  3. Inserted by A.O. 1937.
  4. Substituted by Act 3 of 1951, section 3 and Schedule, for "the States".
  5. 1st April, 1937.
  6. Added by the A. O. 1948.
  7. The words "of India" omitted by Act 42 of 1953, section 4 and Schedule III.
  8. 15th August, 1947.

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## Section 273 - Conclusiveness of probate or letters of administration

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Probate or letters of administration shall have effect over all the property and estate, moveable or immoveable, of the deceased, throughout the State 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:

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shall, unless otherwise directed by the grant, have like effect throughout <sup>1</sup> [the other States <sup>2</sup> [\* \* \*]]

<sup>3</sup> [The proviso to this section shall apply in <sup>4</sup> [India] <sup>5</sup> after the separation of Burma and Aden from India to probates and letters of administration granted in Burma and Aden before the date of the separation, or after that date in proceedings which were pending at that date.]

<sup>6</sup> [The proviso shall also apply in <sup>4</sup> [India] <sup>7</sup> [\* \* \*] <sup>8</sup> after the separation of Pakistan from India to probates and letters of administration granted before the date of the separation, or after that date in proceedings pending at that date, in any of the territories which on that date constituted Pakistan.]

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  8. 15th August, 1947.
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#### **Section 274 - Transmission to High Courts of certificate of grants under proviso to section 273**

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(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:

- (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 State, 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.

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#### **Section 275 - Conclusiveness of application for probate or administration if properly made and verified**

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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.

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#### **Section 276 - Petition for probate**

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(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

- (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
- (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.

(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 State, the petition shall further state the amount of such assets in each State and the District Judges within whose jurisdiction such assets are situate.

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#### **Section 277 - In what cases translation of Will to be annexed to petition. Verification of translation by person other than Court translator**

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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:

"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."

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#### **Section 278 - Petition for letters of administration**

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(1) Application for letters of administration shall be made by petition distinctly written as aforesaid and stating

- (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.

(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 State, the petition shall further state the amount of such assets in each State and the District Judges within whose jurisdiction such assets are situate.

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#### **Section 279 - Addition to statement in petition, etc., for probate or letters of administration in certain cases**

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(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<sup>1</sup>[India], shall state in his position, in addition to the matters respectively required by section 276 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.

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1. Substituted by Act 3 of 1951, sec. 3 and Schedule, for "the States".

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#### **Section 279 - Addition to statement in petition, etc., for probate or letters of administration in certain cases**

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(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<sup>1</sup>[India], shall state in his position, in addition to the matters respectively required by section 276 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.

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1. Substituted by Act 3 of 1951, sec. 3 and Schedule, for "the States".

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#### **Section 280 - Petition for probate, etc., to be signed and verified**

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The petition for probate or letters of administration shall in all case be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner, namely:

"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."

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#### **Section 281 - Verification of petition for probate, by one witness to Will**

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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:

"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)."

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## **Section 282 - Punishment for false averment in petition or declaration**

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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, 1860 (45 of 1860).

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## **Section 283 - Powers of District Judge**

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- (1) In all cases the District judge or District Delegate may, if he thinks proper,
  - (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 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 State, 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.

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## **Section 284 - Caveats against grant of probate or administration**

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- (1) Caveats against the grant of probate or administration may be lodged with a District Judge or a District Delegate.
- (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 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) Form of caveat. The caveat shall be made as nearly as circumstances admit in the form set forth in Schedule V.

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## **Section 285 - After entry of caveat, no proceeding taken on petition until after notice to caveator**

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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.

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## **Section 286 - District Delegate when not to grant probate or administration**

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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.

Explanation. "Contention" means the appearance of any one in person, or by his recognised agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

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#### **Section 287 - Power to transmit statement to District Judge in doubtful cases where no contention**

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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 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.

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#### **Section 288 - Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court**

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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 purpose 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.

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#### **Section 289 - Grant of probate to be under seal of Court**

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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.

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#### **Section 290 - Grant of letters of administration to be under seal of Court**

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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.

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#### **Section 291 - Administration bond**

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(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.

(2) When the deceased was Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person

(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.

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#### **Section 292 - Assignment of administration-bond**

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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 to him or them instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustees for all person interested, the full amount recoverable in respect of any breach thereof.

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### **Section 293 - Time for grant of probate and administration**

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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.

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### **Section 294 - Filing of original Wills of which probate or administration with Will annexed granted**

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(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.

(2) The State Government shall make regulations for the preservation and inspection of the Wills so filed.

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### **Section 295 - Procedure in contentious cases**

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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 (5 of 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.

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### **Section 296 - Surrender of revoked probate or letters of administration**

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(1) When a grant of probate or letters of administration is revoked or annulled under this Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court which made the grant.

(2) If such person wilfully and without 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.

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### **Section 297 - Payment to executor or administrator before probate or administration revoked**

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When a grant of probate or letters of administration is revoked, all payments bonafide 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.

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### **Section 298 - Power to refuse letters of administration**

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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.

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## **Section 299 - Appeals from orders of District Judge**

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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 (5 of 1908), applicable to appeals.

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## **Section 300 - Concurrent jurisdiction of High Court**

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(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.

(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<sup>1</sup>[\* \* \*] 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 State Government has, by a notification in the Official Gazette, authorised it so to do.

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1. The words "and the province of Burma" omitted by the A.O. 1937.

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## **Section 300 - Concurrent jurisdiction of High Court**

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(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.

(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<sup>1</sup>[\* \* \*] 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 State Government has, by a notification in the Official Gazette, authorised it so to do.

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1. The words "and the province of Burma" omitted by the A.O. 1937.

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## **Section 301 - Removal of executor or administrator and provision for successor**

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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.

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## **Section 302 - Directions to executor or administrator**

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Where probate or letters of administration in respect of any estate has 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.

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