

Indian Succession Act, 1925

Chapter 13 - Of the Liability of an Executor or Administrator for Devastation

When an executor or administrator misapplies the estate of the deceased or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

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.
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Section 369 - Liability of executor or administrator for neglect to get any part of property

When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to 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.
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Section 370 - Restriction on grant of certificates under this Part

(1) A succession certificate (hereinafter in this Part referred to as a certificate) shall not be 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.

(2) For the purposes of this Part, "security" means-

- (a) any promissory note, debenture, stock or other security of the Central Government or of a State Government;
- (b) any bond, debenture, or annuity charged by Act of Parliament¹[of the United Kingdom] 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 the²[State Government] may, by notification in the Official Gazette, declare to be a security for the purposes of this Part.

1. Inserted by the A. O. 1950.

2. The words "G.G. in C". have been successively amended by the A.O. 1937 and the A.O. 1950 to read as above.

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Section 371 - Court having jurisdiction to grant certificate

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.

Section 372 - Application for certificate

(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 (5 of 1908) for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely:-

(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 whom 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 198 of the Indian Penal Code, 1860 (45 of 1860).

1[(3) Application for such a certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof]

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(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 whom 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;

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Section 373 - Procedure on application

(1) If the District Judge is satisfied that 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 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.

Section 374 - Contents of certificate

When the District Judge grants a certificate, he shall therein specify 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.

Section 375 - Requisition of security from grantee of certificate

(1) The District Judge shall in any case 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 petitioner 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.

Section 376 - Extension of certificate

(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.

(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.

Section 377 - Forms of certificate and extended certificate

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 378 - Amendment of certificate in respect of powers as to securities

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 petitioner 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 379 - Mode of collecting court-fees on certificates

(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 (7 of 1870), in respect of the certificate or extension applied for.

(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.

Section 380 - Local extent of certificate

A certificate under this Part shall have effect throughout [1](#) [India][2](#) [* * *].

[3](#) [This section shall apply in [1](#) [India][4](#) after the separation of Burma and Aden from India to certificates granted in Burma and Aden before the date of the separation, or after that date in proceedings which were pending at that date.]

[5](#) [It shall also apply in [1](#) [India] [6](#) [* * *][7](#) after the separation of Pakistan from India to certificates 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 Act 3 of 1951, section 3 and Schedule, for "the States".
 2. The words "of India" omitted by the A.O. 1950.
 3. Inserted by the A.O. 1937.
 4. 1st April, 1937.
 5. Added by the A.O. 1948.
 6. The words "of India" omitted by Act 48 of 1952, section 3 and Schedule II.
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Section 381 - Effect of certificate

Subject to the provisions of this Part, the certificate of the District Judge shall, with respect 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.

Section 382 - Effect of certificate granted or extended by Indian representative in Foreign State and in certain other cases

[1](#) [382. Effect of certificate granted or extended by Indian representative in Foreign State and in certain other cases

Where a certificate in the form, as nearly as circumstances admit, of Schedule VIII-

(a) has been granted to a resident within a foreign State by an Indian representative accredited to that State, or

(b) has been granted before the commencement of the Part B States (Laws) Act, 1951 (3 of 1951), to a resident within any Part B State by a district judge of that State or has been extended by him in such form, or

(c) has been granted after the commencement of the Part B States (Laws) Act, 1951 (3 of 1951), to a resident within the State of Jammu and Kashmir by the district judge of that State or has been extended by him in such form, the certificate shall, when stamped in accordance with the provisions of the Court-Fees Act, 1870 (7 of 1870), with respect to certificates under this Part, have the same effect in India as a certificate granted or extended under this Part.]

1. Substituted by Act 1957, sec. 2 for the former section.

Section 382 - Effect of certificate granted or extended by Indian representative in Foreign State and in certain other cases

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1. Substituted by Act 1957, sec. 2 for the former section.

Section 383 - Revocation of certificate

A certificate granted under this Part may be revoked for any of the following causes, 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.

Section 384 - Appeal

(1) Subject to the other provisions of this Part, an appeal shall lie to the High Court from 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 (5 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 (5 of 1908), as applied by section 141 of that Code, an order of a District Judge under this Part shall be final.

Section 385 - Effect on certificate of previous certificate, probate or letters of administration

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 386 - Validation of certain payments made in good faith to holder of invalid certificate

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 387 - Effect of decisions under this Act, and liability of holder of certificate thereunder

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 388 - Investiture of inferior courts with jurisdiction of District Court for purposes of this Act

(1) The State Government may by notification in the 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.

(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 subsection (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 (5 of 1908), as applied by section 141 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.

Section 389 - Surrender of superseded and invalid certificates

(1) When a certificate under this Part 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.

Section 390 - Provisions with respect to certificates under Bombay Regulation VIII of 1827

Notwithstanding anything in Bombay Regulation No. VIII of 1827 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.

Section 391 - Saving

Nothing in Part VIII, Part IX or Part 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, 1913¹(3 of 1913).

1. Now the Administrator General Act, 1963 (45 of 1963).

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Section 392 - Repeals

[Rep. by the Repealing Act, 1927 (12 of 1927), section 2 and Schedule]
