

**In Re: the Goods of Hewson**

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**Court :** Kolkata

**Decided On :** Feb-24-1879

**Reported in :** (1879)ILR4Cal770

**Judge :** Richard Garth, C.J. and ;White, J.

**Appellant :** In Re: the Goods of Hewson

**Judgement :**

Richard Garth, C.J.

1. Mr. Evans has argued the case before us on behalf of the Administrator-General, and has directed our attention to the several enactments which bear upon the question, as well as to the practice which has prevailed in the other Presidencies since the passing of Act XIII of 1875.
2. After considering his argument, I have arrived at the conclusion, that grants of administration to an Administrator-General must still be limited to his own Presidency, and that those grants are not affected at all by the Act of 1875.
3. It seems to me to have been the intention of the legislature, that grants of administration to the Administrator-General should be regulated entirely by the Act of 1874.
4. By the 66th section of that Act it is provided that 'nothing contained in the Succession Act, 1865, shall be taken to affect the rights, duties, and privileges of

the Administrators-General of Bengal, Madras, and Bombay.'

5. Then it is very important to observe, that Act XIII of 1875 does not contain any substantive provisions, but is entirely confined in its operation to amending certain sections of the Succession Act of 1865.

6. The recital is that 'Whereas under the Succession Act of 1865 the effect of an unlimited grant of probate or administration is confined to the province in which such grant is made, and that it is expedient to extend over British India the effect of such grants' (that is, grants made under the Succession Act) 'when made by a High Court, &c.;

7. Section 2 then enacts, that 'to Section 242 of the Indian Succession Act of 1865 the following proviso shall be added:

8. Provided that probates and letters of administration granted by a High Court after the first day of April 1875 shall, unless otherwise directed by the grant, have like effect throughout the whole of British India.

9. The enactment, therefore, simply makes an addition to the Succession Act of 1865, and applies only, as it seems to me, to grants of administration made under that Act. And as Section 66 of the Administrator-General's Act of 1874 provides that the Succession Act of 1865 shall not affect the rights or duties of Administrators-General, I consider that those rights and duties cannot be affected by any addition which is subsequently made to the Succession Act.

10. If a general grant of administration to the Administrator General of Bengal had the effect of vesting in him any property belonging to the estate of the deceased situate in Madras, the rights and duties of the Administrator-General of Madras, as regards that property, would undoubtedly be affected by the grant.

11. It might operate certainly as an advantage to the public that each estate should be dealt with separately by one Administrator-General; but it might also lead to much jealousy and inconvenience as between different Administrators-General; and I cannot help thinking that the intention of the legislature in making the Act of 1875 a part of the Succession Act, was to leave the position of Administrator-

General precisely as it was before.

12. We have desired enquiries to be made of the Registrars of the High Courts at Madras and Bombay, and we find that no alterations have been made by those Courts in grants to the Administrator-General since the Act; and that those grants have always been considered as limited to the particular province in which they are granted.

13. In this view of the case, it will not, I think, be necessary to limit the grant as desired by the Administrator-General, but it will be issued in the same form as it always has been, the effect of it being controlled in accordance with our present judgment.

**White, J.**

14. The petition presented by the Administrator-General of Bengal in the goods of Lieutenant Hewson, deceased, shows that the intestate died possessed of certain assets within the territorial area assigned by Act II of 1874 to the Administrator-General of Bengal, and also of assets to the extent of about 1,000 rupees within Scinde, which is comprised in the territory is signed by the same Act to the Administrator-General of Bombay.

15. The Administrator-General, in applying for letters of administration, contended that he was entitled to a grant limited to the assets within his own territory.

16. The learned Judge to whom the application was made has submitted to us the question, whether, having regard to the provisions of Act XIII of 1875, he ought so to limit the grant. Act XIII of 1875, which is an Act to amend the law relating to probates and letters of administration, directs, by Section 2, that letters of administration granted by a High Court after the 1st day of April 1875 shall, unless otherwise directed by the grant, have effect throughout the whole of British India.

17. The first question that arises is whether the above section applies in the case of grants to the Administrator-General.

18. I am of opinion that it does not. Previous to the passing of Act XIII of 1875, letters of administration granted by the High Court of Calcutta could only have effect throughout the province, as defined by the Indian Succession Act, 1865; that is to say, throughout that division of India over which our High Court has jurisdiction. This effect was given to the grant by virtue of Section 242 coupled with Section 264 of the Indian Succession Act.

19. The preamble of Act XIII of 1875 refers to this fact in the following words: 'Whereas under the Indian Succession Act, 1865, the effect of an unlimited grant of letters made by any Court in British India is confined to the province in which such grant is made.' The Act then proceeds, by Section 2, to amplify the effect of such grant in the case of the High Court, and it does this by enacting that a proviso shall be added to Section 242 of the Indian Succession Act. It appears to me that the intention of the legislature was to extend the effect of a High Court grant only in cases where the grant was made under the Indian Succession Act.

20. The 66th section of the Administrator-General's Act (II of 1874) directs that nothing contained in the Indian Succession Act of 1865 shall affect the rights, duties, and privileges of the Administrator-General. This clause is not re-enacted in Act XIII of 1875, but I think that Section 66 applies not only to the Succession Act, 1865, but also to the proviso added to Section 242 of that Act by Act XIII of 1875.

21. Independently of this construction, I should hold that Section 2 of Act XIII of 1875 does not apply to grants issuing to the Administrator-General.

22. These are not made, nor could be made, under the Indian Succession Act, nor by any power to grant administration which the High Court may have inherited from the Supreme Court. The Administrator-General has no locus standi to apply for letters, except under the Special Act of 1874. His right takes its root from that Act alone. Again, the High Court has, under that Act jurisdiction to grant letters to the Administrator-General in many cases in which it could have no jurisdiction were the applicant an ordinary person. The Act of 1874 has assigned to the Administrator-General of Bengal a much more extensive territory than that which is subject to the High Court or than the province, as defined by the Indian

Succession Act.

23. The late Supreme Court could only grant administration when assets were found within its jurisdiction, as defined by Charter. The High Court, except under the Administrator-General's Act, can now only grant administration when the deceased has left property within its province (Section 246 coupled with Section 264 of Act X of 1865. But under Act II of 1874 it can grant letters to the Administrator-General of Bengal, although there are no assets within its province, provided there are assets within the territory assigned to the Administrator-General; as for instance in the Punjab or the North-West Provinces Section 14 of Act II of 1874.

24. It thus appears that prior to the passing of Act XIII of 1875, the High Court did, in the case of the Administrator-General, grant letters which were not confined to the province, in which the grant was made. This circumstance, added to the exceptional position in which the Administrator-General is placed by Act II of 1874, furnishes to my mind a strong reason for holding, irrespective of the construction which extends Section 66 of Act II of 1874 to Section 2 of Act XIII of 1875 that the legislature never intended Act XIII of 1875 to apply to grants made to the Administrator-General.

25. The conclusion I have arrived at on this question is fortified by the opinion of Mr. Justice Green of Bombay, which, though extra-judicial, is entitled to considerable weight. That learned Judge, as appears by the papers submitted by the Counsel of the Administrator-General, stated in answer to a reference made to him by the Registrar of his Court and the Administrator-General of Bombay, that 'notwithstanding the precedent of the practice adopted by the High Court at Madras, he should recommend that the practice followed under Act II of 1874 should not be altered by any reference to the provisions of Act XIII of 1875.'

26. Although of opinion that Section 2 of Act XIII of 1875 does not apply to grants to the Administrator-General, I think that such grants should not, except under special circumstances (of which none exist in the present case), be limited to the assets within the territory assigned to the Administrator-General of Bengal, or be limited in any other respect.

27. The grant being the creature of Act II of 1874, its form and effect must be governed by that Act until altered by the legislature. No form of grant is given by the Act, but by Section 29, when letters are granted to the Administrator-General by virtue of his office, he is authorized to act as 'Administrator of the estate to which the letters relate.' Beyond this statement, the Act is silent as to the area over which the grant, when once made, is to operate. It certainly does not prescribe that where the assets of the deceased person are within two or more of the territories assigned to the respective Administrators-General, the form or effect of the grant shall be different to that which it is where the assets lie wholly within the territory of one Administrator-General. Nor does it expressly give to each Administrator-General, as against his brother Administrators-General, a monopoly of the administration of the assets which happen to lie within his territory. Whether it impliedly does so or not, is a question that need not be determined now.

28. I am of opinion, therefore, having regard to the provisions of Act II of 1874, that the form of the grant in the case before us should be general and unlimited, and this is agreeable to the existing practice, as stated by Mr. Evans, the Counsel for the Administrator-General, and confirmed by the precedents which he handed to us, and in which the ordinary form of grant was general and unlimited in its terms. It is a distinct question what the effect of the grant will be, meaning by that what is the area in India over which the grant will operate. Beyond saying that its effect, whatever it may be, is not enlarged by Section 2 of Act XIII of 1875, it is unnecessary to decide that question upon the present application. The precise effect and operation of a grant under Act II of 1874 will remain to be determined, should the Administrator-General on any future occasion apply for a grant in a case where it is brought to the notice of the Court, that the Administrator-General of another Presidency has already obtained administration to the estate of the deceased, or if the Administrator-General of another Presidency should, by virtue of his grant, file a suit in our High Court to recover assets situate within the territory assigned to the Administrator-General of Bengal.