

Present : Fisher C.J. and Driberg J.

1929

WILSON v. EMMANUEL.

189—D. C. Jaffna, 5,408.

*Probate—Sealing of foreign probate—Probate issued at Madras—
British possessions—British and Colonial Probate Ordinance,
No. 7 of 1921, s. 4.*

Recognition of probate or letters of administration under section 4 of the British and Colonial Probate Ordinance, No. 7 of 1921, may be obtained with respect to only those granted in British possessions to which the Ordinance is made applicable by proclamation.

The Ordinance does not preclude an application from being made under section 539 (c) of the Civil Procedure Code on a proper exemplification of the foreign probate.

A PPEAL from an order of the District Judge of Jaffna.

One A. R. A. R. S. M. Somasunderam Chetty died in Ceylon leaving a large estate. On the footing that he left no will, letters of administration were issued in the District Court of Jaffna to the Secretary of the Court as official administrator. Somasunderam Chetty left as his heirs three sons, who were adjudicated insolvent in Madras. Subsequently a last will purporting to be the will of Somasunderam Chetty was discovered in India, it was proved in the Madras High Court and letters of administration *cum testamento annexo* were issued to the official assignee in Madras of the insolvent estate of the said three sons of Somasunderam Chetty.

In the present case the appellant, the said official assignee, to whom letters had been issued in Madras, filed a petition and affidavit along with a certified copy of the said letters and asked that the said letters be sealed with the seal of the Jaffna Court under the provisions of section 4 of Ordinance No. 7 of 1921, and also that the letters already issued to the Secretary of the District Court of Jaffna be recalled. The District Judge refused the application as it had not fully complied with the requirements of Ordinance No. 7 of 1921.

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H. V. Perera (with *Subramaniam* and *Thiagarajah*), for petitioner, appellant.—The petitioner has substantially complied with the provisions of Ordinance No. 7 of 1921. Even if he is not entitled to claim the benefits allowed by the Ordinance, still he can under the provisions of section 539 (c) of the Civil Procedure Code on the exemplification produced ask that recognition be given to the letters issued by the Madras Court and probate of the copy be granted. No good reasons have been shown why the Ceylon Court should not follow the decision of the Madras Court as to the grant of the letters, an exemplification of which was before Court.

Counsel cited *In re Estate of Sinne Thambi Poothepillai*.¹

C. V. Ranawake, for the official administrator, respondent.—The application has been made under the special procedure laid down in Ordinance No. 7 of 1921, no alternative remedy has been asked; the application was rightly refused inasmuch as there was no proof under section 3 of the Ordinance that the Ordinance applied to probate or letters issued by the Madras High Court.

As to the alternative remedy now asked, the original application itself does not contain a prayer to this effect. An application under section 539 (c) of the Civil Procedure Code should be made in due form and on proper material. Further, the recall of the letters already issued could not have been allowed inasmuch as under section 536 of the Civil Procedure Code there has been no proof either that the present letters should not have been granted or that the present administration has been rendered "impracticable and useless."

November 25, 1929. FISHER C.J.—

In this case the appellant petitioned the District Court of Jaffna to order that "the letters of administration with the will annexed granted to the petitioner by the High Court of Madras and already filed of record be resealed by this Court in terms of section 4 of Ordinance No. 7 of 1921." He also asked "that letters of administration already granted to the official administrator be recalled." In the absence of any proclamation under section 3 of Ordinance No. 7 of 1921, that Ordinance clearly does not apply, and I think in view of the necessity of requiring a strictness of procedure under the circumstances in this case that was sufficient to justify the dismissal of the petition. I do not think, however, the passing of that Ordinance can be taken to have any effect on the decision of D. C. Jaffna (Testamentary), 702: *In the Matter of the Estate of the late Sinne Tamby Poothepillai*.² That Ordinance merely provides an alternative method of procedure in such cases, if any, to which it may be applicable. The method of establishing the authenticity of a will made elsewhere than in Ceylon

¹ (1896) 2 N. L. R. 214.

² (1896) 2 N. L. R. 214.

is not affected by the Ordinance. As regards the prayer for recall of the letters of administration no case was made out that events had occurred which rendered the administration "impracticable or useless." It would be perfectly easy for the administrator, if so advised, to apply to alter the footing of his administration. In dismissing the appeal the learned Judge has given the appellant leave to renew his application "in proper form and on proper material." That part of his order will stand, and it will be open to the appellant to take such steps as he may be advised to obtain the decision of the Court as to whether he is entitled to administer the estate and is the proper person under all the circumstances to be appointed to do so.

The appeal is dismissed with costs.

DRIEBERG J.—I agree.

Appeal dismissed.

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