

## APPENDIX.

[See R. A. No. 11 of 1861, *antè*, p. 61 *et seq.*]

## Bombay Act No. VII. of 1866.

PASSED BY THE GOVERNOR OF BOMBAY IN COUNCIL ON THE 28TH APRIL 1866 : RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 15TH MAY 1866.

*An Act to limit the liability of a Son, Grandson, or Heir of a deceased Hindú for the debts of his Ancestor, and the liability of a Second Husband of a Hindú Widow for the debts of her deceased Husband, and otherwise to amend the Law of Debtor and Creditor.*

WHEREAS according to the law in force, as applied to Hindús by the High Court of Judicature at Bombay in the exercise of its ordinary original civil jurisdiction, no son or grandson of a deceased Hindú is liable for the debts of his ancestor merely by reason of his being such son or grandson, and no son, grandson, or other heir of a deceased Hindú who has received assets of the deceased, is merely from that circumstance liable for the debts of his ancestor beyond the amount of the assets received, and no person marrying a Hindú widow is liable in consequence of such marriage for the debts of her former or any prior deceased husband ; and whereas a different law is applied to Hindús by the Civil Courts which exercise jurisdiction in places beyond the local limits of the ordinary original civil jurisdiction of the said High Court, and it is expedient to amend the law as applied by such other Courts, and to make the law in that respect uniform throughout the Presidency of Bombay ; and whereas it is also expedient to limit the liability of a Hindú for a family debt contracted when he was unborn or under twenty-one years of age : It is hereby enacted and declared as follows:—

I. No son or grandson of a deceased Hindú shall, merely by reason of his being such son or grandson, be liable to be sued for any of the debts of such deceased Hindú.

Hindú son or grandson not to be liable as such for debt of deceased ancestor.

II. No son, grandson, or heir of a deceased Hindú, who has, by himself or his agent, received or taken possession of any property belonging to the deceased, shall be liable personally for any of the debts of the deceased, merely by reason of his having so received or taken possession of any such property : but the liability of such son, grandson, or heir in respect of such debts, shall be as the representative of such deceased Hindú, and shall be limited to paying the same out

Heir to be liable as representative of deceased ancestor to the extent of assets received, and personally to the extent of assets received and not duly applied.

of, and to the extent of, the property of the deceased which such son, grandson, or heir or any other person by his order or to his use has received or taken possession of as aforesaid, and which remains unapplied : Provided that if any part of such property so received or taken possession of as aforesaid shall not have been duly applied by such son, grandson, or heir, he shall be liable personally for such debts to the extent of the property not duly applied by him.

III. With respect to any suit brought to recover any debt contracted by a deceased Hindú from the son, or grandson, of such deceased Hindú, merely by reason of the defendant being such son, or grandson, or from the son, grandson, or heir of such deceased

Act to apply to pending suits, in which judgment has not been pronounced. Saving as to costs.

Hindú merely by reason of the defendant having as such son, grandson, or heir received or taken possession of any property of the deceased, and in which suit judgment shall not have been pronounced before this Act comes into operation, the plaintiff shall be entitled, if such debt be proved or admitted, to a decree against the defendant, not personally but only as representative of such deceased Hindú, and if the decree is for money, the same shall be directed to be paid out of the property of such deceased Hindú, and may be executed in the manner provided for the execution of decrees of a like kind under Section two hundred and three of the Code of Civil Procedure, and with regard to the costs of any suit to which the provisions of this Section shall apply, the same shall be dealt with by the Court which makes the decree in the suit, in the same way as such costs would have been dealt with had a decree been made in such suit before this Act had come into operation.

IV. No person who has married a Hindú widow shall, merely by reason of such marriage, be liable for any of the debts of any prior deceased husband of such widow ; and the provisions of this Section may be used as a defence by any such person who shall be defendant in a suit which may be pending at the time when this Act comes into operation,

Husband of Hindú widow not to be liable for debt of deceased former husband. Section to apply to pending suits, in which judgment has not been pronounced. Saving as to costs.

and in which it is sought to make such person liable for any such debts merely by reason of his having married such Hindú widow, and in which suit judgment shall not have been pronounced before this Act comes into operation ; and with regard to the costs of any suit to which the provisions of this Section shall apply, the same shall be dealt with by the Court which makes the decree in the suit, in the same way as such costs would have been dealt with had a decree been made in such suit before this Act had come into operation.

V. Where a debt is contracted after this Act shall come into operation by one or more members of an undivided Hindú family to be liable for undivided Hindú family under such

Member of undivided Hindú family to be liable for

family debts contracted when he was less than 21 years old to the extent of assets received.

circumstances as that the same forms the debt of the undivided family, no member of such undivided family who is unborn or under the age of twenty-one years at the time of the contracting of such debts

shall be liable personally to pay the same, but such member shall only be liable to pay the same out of and to the extent of the property of the undivided Hindú family, and of the separate property, if any, belonging to any deceased members of the undivided family who were above the age of twenty-one years at the time of the contracting the same, received or taken possession of by such member, or any other person by his order or to his use, and remaining unapplied, unless any part of such property so received or taken possession of as aforesaid shall not have been duly applied by such member, in which case he shall be further liable personally for such debt to the extent of the property not duly applied by him.

VI. Except as provided in Section V. of this Act, nothing in this Act contained shall be construed as limiting or affecting the liability of any person as surviving member or one of the surviving members of an undivided Hindú family for any debt contracted under such circumstances as that the surviving member or surviving members of such undivided family is or are by the law now in force liable to pay the same.

Saving of liability of surviving member of undivided Hindú Family.

VII. The term "debts," as used in this Act, shall be construed to include all liabilities arising out of any claims which could or might be enforced against a deceased Hindú himself if living, and for which a suit would lie against his representative : and, unless there be something in the context or subject repugnant to such construction, words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number, and words importing the masculine gender shall include females.

Interpretation—  
" Debts.  
Number.  
Gender."

VIII. This Act shall come into operation as soon as the assent of the Governor General thereto shall have been published by the Governor of Bombay in the *Bombay Government Gazette*.

IX. This Act may be cited for all purposes as the "Bombay Hindú Heirs' Relief Act, 1866."

Short title.

NOTE.—This Act was introduced by the Honourable J. S. White, with the following Statement of Objects and Reasons :—

1. By the law which prevails in the Mofussil of this Presidency, the creditor of a deceased Hindú can compel the son or grandson to pay the debts of the deceased, although the latter

died a pauper. By the same law a creditor of the deceased husband of a widow can compel the second husband of the widow to discharge the money due from the deceased husband. In

the one case the liability springs from the bare fact of the blood relationship subsisting between the deceased and the party sued, in the other case from the single circumstance that the second husband has chosen to take possession of the widow of the deceased, who seems to be considered as part of the property of the deceased. In both cases the liability is entirely independent of the receipt or possession of any assets of the deceased by the party sued.

2. By the same law, if the heir of a deceased Hindú takes possession of any part of his property, he is held to be personally liable for the whole of the debts of the deceased, although the property left by the ancestor may be totally inadequate to satisfy those debts in full, and although the heir has not misapplied any of the property which has come to his hands.

3. It is clear that the law in question operates as a great hardship upon those to whom it is applied. It is opposed to justice, and acts as a clog upon the industrial life of the Hindú community. It also discourages the near relatives of the deceased from taking charge of his property on his death and performing the duties of administration.

4. Moreover, the law which is thus applied by the Mofussil Courts of this Presidency does not appear to prevail either in the Presidency of Bengal or in that of Madras. In those parts of India the texts of the Hindú law books which enjoin upon a son or grandson the payment of the debts of his father and grandfather, are construed as importing a moral or religious obligation, and not a civil one. With the moral or religious obligation the present Bill does not seek to interfere. Its object is simply to take the obligation of the son or grandson, whatever it may be, out of the category of obligations which can be enforced in a Court of Justice.

5. The limited application of the law in question is further shown by this, that it does not obtain in the Presidency Town, which is subject to the original jurisdiction of the High Court, and lately of the Supreme Court. In that Court it has always been held a good plea to a suit brought against the son and heir of a deceased Hindú that no property of the father had come to the son by succession or descent, and where assets have been proved to have

come to the hands of an heir, his liability has been treated as commensurate with those assets. As regards the liability of a second husband of a Hindú widow for the debts of her first husband, it is believed that no attempt has ever been made to enforce such a liability in the late Supreme Court or in the present High Court. The difference thus apparent between the law in the Mofussil and that in our Presidency Town furnishes an additional reason for introducing the present measure. It will have the effect of rendering the law uniform throughout the Presidency, and the object will be accomplished by giving predominance to those decisions upon Hindú law which are most consistent with the general principles of justice and the well-being of the people.

6. It has been long felt that the state of the law in the Mofussil of this Presidency, which has been above adverted to, required amendment. The Judges of the late Supreme Court and Sudder Dewanee Adawlut have on several occasions recommended that a change in the law should be effected. The Honourable Mr. Frere, accordingly, introduced into the Mofussil Insolvent Bill, of which he was in charge before his retirement from India, a section framed for the expressed purpose of remedying the evil complained of. As that Bill is not at present being proceeded with, and the question is one which should be dealt with by the Legislature without further delay, leave has been obtained to introduce the present Bill.

7. The Bill, so far as it relates to the Presidency Town, is merely declaratory of the law already existing; and it applies the same law to the Mofussil by providing that the mere relationship of son or grandson to a deceased Hindú shall not render the son or grandson liable for the debts of his ancestor, nor the mere marriage of a Hindú widow entail upon the second husband a liability for the debts of the first husband. With regard to the liability of an heir, having assets of his ancestor, the Bill follows the provisions of the 203rd Section of the Code of Civil Procedure, and limits his liability to the assets which he has received or not duly applied.

8. The Bill and this statement should be translated into Maráthi, Gujaráti, Canarese, and Sindi.