

ECCLESIASTICAL SIDE.

In the Goods of NAGINDAS (deceased).

Indian Registration Act, 1866, Secs. 44, 45, 46, 65, and 77—Deposit of Will—Probate—Jurisdiction.

A Testator deposited his Will in a sealed cover with the Registrar of Assurances at Bombay, under Sec. 44 of Act XX. of 1866; and upon his death his executors applied to the Registrar to deliver over to them the Will, in order to enable them to apply to the High Court for Probate thereof. The Registrar gave a copy of the Will, under Sec. 46 of the Act; but refused to part with the original.

On application by the executors for a citation to the Registrar General, to bring the Will into Court, and deposit it with the Ecclesiastical Registrar:—

Held that the original should be brought into Court, where alone the *factum* of the Will could be tried and determined; and that a copy, authenticated under Sec. 65 of the Act, was not sufficient.

The Registrar General should not, after the death of the depositor of a Will, part with it otherwise than by order of the Court.

SCOBLE, on behalf of the applicants, who were the executors of the will of Nagindás, deceased, moved for an order to the Ecclesiastical Registrar, directing him to issue a citation, under the seal of the Court, to the Registrar General of Assurances, or to the Registrar of Bombay, to bring in and deposit with the Ecclesiastical Registrar the last Will and Testament of the Testator, substituting in the records of the Registrar General an authenticated copy thereof which had been granted to the applicants.

1867.

March 1.

*In the goods
of NAGINDAS.*

Nagindás made and published his last Will in Gujaráti on the 27th of June 1866; and on the 2nd of July following deposited it with the Registrar of Assurances at Bombay under a sealed cover, pursuant to Sec. 44 of Act XX. of 1866. Nagindás died in Bombay on the 21st of September 1866; and the applicants, who were executors of the Will, in the month of February 1867, applied to the Registrar of Assurances to deliver over to them the original Will, which had been deposited as above mentioned, in order to enable them to apply for grant of probate thereof. The Registrar refused to part with the original Will, but gave to the applicants an authenticated copy thereof under his seal of office.

1866.
 March 15
 In the goods
 of NA'GINDA'S.

WESTROPP, J. :—This is a new point ; as similar cases are likely to occur frequently, I shall defer my decision until I have mentioned the matter to the Chief Justice.

Cur. adv. vult.

WESTROPP, J. :—The Registrar General has declined to give up the Will in this case, relying on Secs. 44, 45, 46, and 65, of the Act. Those sections and Sec. 77 were referred to by Mr. Scoble. I have mentioned this matter to the Chief Justice ; and we think that the suggestion which has been made in the Registrar General's Department, that a copy would be sufficient, is untenable. In this court alone can the *factum* of the will be tried and determined ; and for that purpose it is absolutely necessary that the Will itself should be brought into court.

It never could have been the intention of the Legislature without express words to interfere with the Probate jurisdiction of this court. And there is nothing in the Registration Act which affects to do so. This court has the power to call upon the Registrar General of Assurances, as well as upon anybody else, to bring a Will in his custody into court.

The Registrar General should make a copy of the Will for his archives, and make a note on it that the original has been removed into this court by its order to that effect ; and it would be well that he should file the order in his office with that copy.

It should be clearly understood that the Registrar General ought not to give up a Will when applied to by a party interested in its production, but should wait for an order of this court.

The Court ordered that the Will should be lodged in court, and at the same time directed the Ecclesiastical Registrar to write to the Registrar General a letter communicating to him the views of the Court.