

(1871) 04 CAL CK 0002
In the Calcutta High Court

**In Re: H.B. Beresford
 In Re: T.H. Maddock**

Date of Decision : 28-04-1871

Acts Referred:

Citation : (1871) 04 CAL CK 0002

Judgement

Norman, J.—The 11th clause of schedule I. of the Court Fees Act of 1870 provides for the fee which is to be payable on the probate of a will or letters of administration, with or without the will annexed. The 12th clause provides for the fee payable upon a certificate granted under Act XXVII of 1860 (for facilitating the collections of debts on successions for the security of parties paying debts to the representatives of deceased persons). The fee is thereby fixed at 2 per cent on the amount or value of the property in respect of which the probate, or letters, or certificate shall be granted, if such amount exceeds the sum of Rs. 1,000. The Court Fees Act contains no such exception of trust properties as is to be found in the 38th section of the English Stamp Act, 55 Geo. III., c. 184. I am of opinion that the term "property," as mentioned in those clauses, includes not only property to which the deceased was beneficially entitled during his life-time, but also all property which stood in his name as trustee, or of which he was possessed benami for others. The language of the clause, so far as it relates to the amount payable upon property in respect of which probate is to be granted, appears clear; but the meaning becomes still more clear when the note at the foot of those clauses is looked to, which is as follows:-- The person to whom any such certificate is granted, or his representative, shall after the expiration of twelve months from the date of such certificate, and thereafter whenever the Court granting such certificate requires him so to do, file a statement on oath of all moneys recovered or realized by him under such certificate. If the moneys so recovered or realized exceed the amount of debts or other property as sworn to by the person to whom the certificate is granted, the Court may cancel the same, and order such person to take out a fresh certificate and pay the fee prescribed by this schedule for such excess."

2. Now, on reading that note, it appears that, in order to avoid any mistake, the Act expressly says that if the amount recovered or realized under the certificate

exceeds the amount of debts or other property as sworn to, a fee is to be payable for the excess. The fee, therefore, on the certificate is payable on the total amount of the money recovered or realized, without any reference whatever to the amount of the beneficial interest to be disposed of by the person obtaining the certificate. If the money realized, or, in other words, the debts collected, under the certificate amounted to Rs. 20,000, and the liabilities of the testator were Rs. 19,000, the fee would be payable by the person obtaining the certificate upon the entire amount collected, and not upon the surplus assets available to or distributable by him. It is clear, therefore, that the value of the property alluded to in the 11th and 12th clauses does not mean the beneficial interest of the testator in such property. For these reasons I am of opinion that the full ad valorem duty is payable in the case both of Mr. Beresford and of Sir Herbert Maddock.

3. The decision of Chief Justice Sir Richard Couch in the goods of George 6 B.L.R., App., 138 appears to me not to be in any way touched by anything which we have said to-day. The probate there was granted in respect of a will made in execution of a naked power of appointment amongst particular persons, which was not, either in the hands of the testator or of the executor, property of any description. Macpherson, J.

I am entirely of the same opinion, and think that there is nothing whatever in the Court Fees Act to show that there was any intention to exempt trust property from the operation of schedule I., clause 11. Trust property was expressly exempted by the English Stamp Act; and if the Legislature had intended that it should not be chargeable in this country, there would, doubtless, have been an express exemption to that effect in the Court Fees Act. There is no such exemption, and the language used clearly includes trust property.