

**(1923) 07 CAL CK 0027**  
**In the Calcutta High Court**

Thaddens S. Nahapiet and Others

APPELLANT

Vs

Secretary of State

RESPONDENT

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**Date of Decision :** 02-07-1923

**Acts Referred:**

Bengal Court Fees (Amendment) Act, 1922 — Section 17  
Court Fees Act, 1870 — Section 19I

**Citation :** AIR 1924 Cal 987

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**Judgement**

1. We are invited in this appeal to consider the legality of an order made under the Bengal Court Fees (Amendment) Act, 1922 (Act IV of 1922 B.G.).

2. An application for probate was made on the 29th March, 1922, in respect of the estate of one Lazarus. On the 30th March, 1922, the estate was valued and Court fees to the extent of Rs. 18,000 were paid. Thereafter the will was proved on the 8th April, 1922, and an order for probate was made. On the 18th April, 1922, it was brought to the notice of the Court that in the interval between the payment of the Court-fees on the application for probate and the order for probate, the Bengal Court Fees (Amendment) Act, 1922, had come into force on the 1st April, 1922, and that the Court-fees, if calculated on the basis of the amended statute, would exceed the amount already paid by Rs. 10,370. The result was that the applicant was called upon to pay this additional sum. He objected, but as his objection was overruled he paid the amount under protest. We are now invited to consider the legality of this order. It is needless to consider whether the order is appealable or not, because an application has been made for the exercise of our revisional jurisdiction on the ground that the order was made without jurisdiction. We are clearly opinion that the petitioner was not bound to pay the excess amount.

3. Section 19-I of the Court Fees Act provides that no order entitling the petitioner to the grant of probate or letters of administration shall be made upon an application for such grant, until the petitioner has filed in Court a valuation of the property in the form set forth in the First Schedule, and the Court is satisfied that the fees mentioned in para. 11 of that schedule have been paid on such

valuation. The third schedule shows that the petitioner for probate or letters of administration is required to set out in detail the valuation of the movable and immovable properties left by the deceased. The law, consequently, requires that such valuation should be made and the Court-fees paid on the basis thereof before an order entitling the petitioner to the grant of probate or letters of administration is made on the application. It is obvious that till the petitioner has complied with the requirements of the statute in this behalf, the Court cannot pronounce in favour of the validity of the claim for probate or letters of administration. The question is, not whether the petitioner in the case before us could have paid the Court-fees on a later date than he did, but whether he was competent to comply with the requirements of Section 19-I at the time he actually paid. The answer must obviously be in the affirmative and in favour of the petitioner. As soon as he complied with the requirements of the statute, his application was perfected, and he became entitled to an order for the grant of probate or letters of administration if he could establish the genuineness of the testamentary instrument propounded by him.

4. In this connection reference has been made to Section 17 of the Bengal Court Fees Act, 1922, which is in these terms : "Nothing in this Act shall apply to any probate, letters of administration or certificate in respect of which the fee payable under the law for the time being in force has been paid prior to the commencement of this Act, but which have not issued." We are of opinion that this provision really supports the contention of the petitioner, because the fee payable had been paid on the application for probate before the Act came into force on the 1st April, 1922. The view we take is supported by the Principle of the decision in *Swaranamoyee Debt v. The Secretary of State* (1915) 43 Cal. 625 where a similar question was raised.

5. We may add that statutes which impose pecuniary burdens are subject to the rule of strict construction, and it is well settled rule that all charges upon the subject must be imposed in clear and unambiguous terms, as they tend to operate as penalties-The subject is not to be taxed unless the language of the statute clearly imposes the obligation: see *Stockton Ry. Co. v. Barret* (1844) 11 Cl. and F. 590 *Pryce v. Manmouthshire Canal Co.* (1879) 4 A.C. 197 *The Deputy Commissioner of Singhbhum Vs. Jagadish Chandra Deo Dhabal Deb*, . We feel no doubt that upon the terms of the Bengal Court-Fees Amendment Act, 1922, the appellant is entitled to succeed.

6. The result is that this appeal is allowed and the order made by the District Judge set aside. The additional amount which has been paid under protest will be refunded to the appellant. The appellant is entitled to the costs of this appeal. We assess the hearing fee at three gold mohurs.