

(1878) 06 CAL CK 0006

Calcutta High Court

Case No: None

In the Goods of:

Gasper Malcolm

Gasper (deceased)

APPELLANT

Vs

RESPONDENT

Date of Decision: June 18, 1878

Citation: (1878) ILR (Cal) 734

Hon'ble Judges: Richard Garth, C.J

Bench: Single Bench

Judgement

Richard Garth, C.J.

I think it is quite clear that the ad valorem duty must be paid upon the present grant of probate. At the time when the first grant of probate was made to one of the executors named in the will, no ad valorem duty was payable. The only sum charged was a commission fee of Rs. 10. That executor has died, and the other two executors now wish to prove the will. Act VII of 1870 requires the ad valorem duty to be paid upon any grant of probate, and I find no provision exempting these executors from payment of the duty. In fact, but for the official notification made under the provisions of the Act, dated the 24th of April 1874, the ad valorem fee would be payable a second time upon any second grant of probate. But here no injustice is done, because the duty has never been paid upon this property.

2. The case of *In the Goods of Chalmers, deceased* 6 B.L.R. Apx. 137, decided by Sir R. Couch is in point, and is entirely in accordance with the view which I take of this question.

3. The English case to which my attention has been called by Mr. Gregory--*In re the Executors of Lord Cornwallis* 25 L.J. Ex. 142 : 11 Ex. 580--will be found to have no application to the present. That case merely decided that the Succession Duty Act of 1853 did not apply to annuities granted before the passing of that Act.