

(1872) 06 CAL CK 0012

Calcutta High Court

Case No: None

In Re: In The Goods of
Ram Chandra Das,
Deceased

APPELLANT

Vs

RESPONDENT

Date of Decision: June 6, 1872

Judgement

Richard Couch K.T., C.J.

The first question which has been referred to as is whether, in estimating the amount of the ad valorem fee, any allowance is to be made for the debts due by the estate. Now the words in the schedule are:--"If the amount or value of the property in respect of which the probate or letters of certificate shall be granted exceeds one thousand rupees." The letters are granted in respect of the property of the deceased although it may have to be applied to the payment of debts. It is not loss the property of the deceased, because, instead of being given as legacies, it is to applied to paying debts. It is in order that the property may be collected by the administrator and so applied that letters of administration are necessary. It if impossible to road the words as meaning the amount or value after deducting the debts due by the deceased. What has been done in England leads to the same conclusion. The words in the schedule of the English Act are not precisely the same as the words in this Act, but they are substantially the same, "estate or effects of the deceased," with the addition of the exception which has been introduced here by the Financial Resolution mentioned in the reference. It was considered necessary to make an express provision in the English Act for a return of duty in respect of a portion of the property which is applied towards the payment of debts. It may be thought to be a hardship that in this country that should not be allowed. It might be better that it should. The matter may have been in the contemplation of the Legislature in India when this Act was passed, and the Legislature may have thought it was not proper to allow a deduction on account of debts, or it may be that the matter was not thought of at all. We have nothing to do with that. We are not to make the law but to put a construction upon the language which the Legislature has used, and we think the fee must be paid in respect of

the value of the property, without deducting the amount of the debts to be paid out of it. The second question is, whether the ad valorem fee should be charged on the value of the house in Bentinck Street, or on the rent of it? Mr. Phillips was obliged to admit that the duty must be paid either on the value of the house, or on nothing at all. The parties may obtain letters of administration, and have the benefit of them for the purpose of receiving the rent for an indefinite number of years (for there is nothing to pre-vent that), and not pay any duty at all. That almost shows that such a view of the Act is wrong. The letters of administration are granted in respect of the house and of the property in it, but they are limited to the particular purpose of receiving the rent. The administrator is precluded from dealing with the property in any other way than simply to receive the rent; still the administration is in respect of the property. To say that the right to receive the rents is to be considered as property in respect of which there is to be administration is absurd. The right to receive the rent is incidental to the property in the house. We think the right way to assess the duty is to take the value of the house, and upon that the ad Valorem fee ought to be paid.

(1) See Financial Resolution No. 2004, dated 14th July 1871.--"In the exercise of the power vested in him by s. 35 of the Court fees" Act 1870, the Governor-General is pleased to remit in the whole of British India the fee chargeable under (sic) II of the said Act in respect of probate of wills as letters of administration in so far as such, wills or letters of administration relate to property which a deceased per-son was possessed of or entitled to not beneficially bat as a trustee for any other person. Provided that this remission shall not extend to cases in which a trustee has the power of appointing or otherwise conferring a beneficial interest in the said property."