

REFERENCE UNDER THE COURT FEES ACT.

Before Greaves J.

In the goods of

G. T. WILLIAMS (deceased).*

1923

Feb. 20.

*Letters of Administration—Court Fee—Court Fees Act (VII of 1870), s. 5,
Bengal Court Fees Amendment Act (Beng. IV of 1922).*

The sum charged upon a grant of Probate or Letters of Administration is not a tax or duty levied on the property upon which the Probate or Administration operates but is merely a fee levied by the Court issuing the Probate or Letters of Administration for the work done in that connection.

Held, further, that the Bengal Court-Fees (Amendment) Act (Beng. IV of 1922) is not *ultra vires*.

ONE George Thomas Williams died at Port Said leaving properties in the Presidencies of Bengal, Bombay and also in Central India. He left a will and a codicil whereby he appointed the Official Trustee of Bengal to be his executor. Subsequently by consent of his widow and the Official Trustee, Letters of Administration with a copy of the will annexed was granted by the Calcutta High Court to the Administrator-General of Bengal. When the grant was issued the Registrar, Calcutta High Court, asked for and obtained the full *ad valorem* fee, at the rate prescribed by the Bengal Court Fees Amendment Act of 1922, on the whole estate left by the deceased. The fee was paid by the Administrator-General without prejudice to his contention that the fee in respect of the assets situate in Bombay is payable at the rate laid down in the Court Fees Act (VII of 1870).

*Reference under s. 5 of the Court Fees Act, 1870.

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On that this reference was made by the Registrar for the decision of the following question :—

“The assets in the above estate being situated partly in the Presidency of Bengal but largely in the Presidency of Bombay whether the enhanced rate of estate duty prescribed by the Bengal Court Fees Amendment Act (IV of 1922) is to be levied on the whole estate, or whether such estate duty is to be levied at the enhanced rate only in respect of the assets in the Presidency of Bengal and at the lower rate, prescribed by the Court Fees Act, 1870, or other Act for the time being in force in the Presidency or Province where the other assets are situated, on the assets not within the Presidency of Bengal.”

Mr. R. Westmacott, for the Administrator-General of Bengal. Bengal Court Fees Amendment Act of 1922 is *ultra vires*. The duty payable is a stamp duty and the amount has been fixed by Indian Legislature and cannot be altered by local Legislature without previous sanction, which was not obtained in this case. The Bengal Court Fees Amendment Act extends only to Bengal and therefore cannot impose a tax on property outside the province.

The Advocate-General (Mr. S. R. Das). Section 80 A (3) of the Government of India Act and the rules thereunder relate to new taxes and does not apply to enhancement of existing taxes and sanction from the Indian Legislature is required only in cases of new taxes. The duty payable is court fees and is payable by judicial stamps. The application was made in Bengal and the applicant has to submit to the laws applicable to Bengal.

Cur. adv. vult.

GREAVES J. This is a reference under section 5 of the Court Fees Act, 1870, for the purpose of determining the amount of the fees to be paid in respect of the grant of Letters of Administration in the above estate. Two questions are raised. The first is whether the Bengal Court Fees Amendment Act of 1922 (Act IV of 1922) is *ultra vires*. The second question is whether, assuming the Act is not *ultra vires*, the fee is to be levied at the enhanced rate prescribed by the Bengal Court Fees Amendment Act of 1922 (Act IV of 1922) on the whole estate, or whether the enhanced fee is payable only on that portion thereof which is situate in Bengal, the fee in respect of the assets outside Bengal being leviable at the lower rate prescribed by the Court Fees Act of 1870 as amended by subsequent Acts of the Imperial Legislative Council.

On behalf of the Administrator-General of Bengal to whom a grant has been issued, and who has paid under protest the fee at the enhanced rate prescribed by Bengal Act IV of 1922 in respect of all the assets, it is contended, first, that the Bengal Court Fees Act of 1922 is *ultra vires*, second, that if it is *intra vires* it was not competent to the Bengal Legislature to enhance the fees on assets outside Bengal.

I will deal first with the first point. Section 80 (A) of the Government of India Act provides, sub-section 1 (2), that the local Legislature of any province may, subject to the provisions of the sub-section next following, repeal or alter as to that province any law made either before or after the commencement of this Act by any authority in British India other than that local Legislature. And sub-section (3) provides that the local Legislature of any province may not without the previous sanction of the Governor-General make or take into consideration any law (a)

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imposing or authorising the imposition of any new tax unless the tax is a tax scheduled as exempted from this provision by rules made under this Act or (*h*) altering or repealing the provisions of any law which, having been made before the commencement of the Government of India Act, 1919, by any authority in British India other than that local Legislature, is declared by rules under this Act to be a law which cannot be repealed or altered by the local Legislature without previous sanction.

By the rules framed in respect of section 80A (3) (*a*) of the Act it is provided (1) that the Legislative Council of a province may, without the previous sanction of the Governor-General, make and take into consideration any law imposing, for the purposes of Local Government, any tax included in Schedule I to these rules. Schedule I (2) includes a tax on succession and Schedule I (8) includes a stamp duty other than duties of which the amount is fixed by Indian Legislation. By the rules framed in respect of section 80A 3(*h*) it is provided (2) that a local Legislature may not repeal or alter without the previous sanction of the Governor-General (1) any law made by any authority in British India before the commencement of the Indian Councils Act, 1861, (2) any law specified in the schedule to these rules or any law made by the Governor-General in Council amending a law so specified.

Now the Court Fees Act, 1870 (Act VII of 1870), under which the fee payable on a grant of Letters of Administration is levied, which is an Act of the Governor-General of India in Council, is not one of the Acts specified in the schedule to the rules framed in respect of section 80 A 3(*h*).

It will be convenient at this stage to consider the material provisions of that Act. Section 3 provides

(*inter alia*) that the fees chargeable in the different High Courts under No. 11 of the first Schedule (which prescribes the fee payable in respect of Letters of Administration) are to be levied in manner therein-after appearing, that it is to say, by stamps under section 25.

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Now as I understand the argument for the Administrator-General on this first point, it is this that the fee is a stamp duty because it is collected by stamps under the provisions of section 25 of the Court Fees Act, 1870, and inasmuch as that Act is an Act of the Governor-General in Council, it is a duty, of which the amount is fixed by Indian Legislation and that it cannot therefore be altered without the previous sanction of the Governor-General, which admittedly has not been obtained in this case.

The Advocate-General contends that the provisions of section 80A(3) relate only to new taxes and not to the enhancement of existing taxes and that the taxes referred to in Schedule I of the Scheduled Taxes Rules, which can be imposed without leave, all relate to new taxes and that sanction is only required for the imposition of a new tax which does not fall within the provisions of Schedule I, and not to the enhancement of an existing tax. And he contends that under the provisions of section 80A(3)(h) the local Legislature can amend any Act of the Imperial Legislature except those mentioned in the Previous Sanction Rules.

I think that these contentions are correct. Under the provisions of section 80A(1) the local Legislature has power to make laws for the peace and good government of the territories of the Province and under section 80A(2) the local Legislature may, subject as therein mentioned, that is to say, subject to the limitations mentioned in (3) repeal or alter as to that

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province any law made before or after the commencement of the Act by any authority in British India.

The limitations imposed by (3) relate (a) to the imposition of new taxes other than those set out in Schedule I of the Scheduled Taxes Rules. Now it is quite true that duties which are collected by means of stamps are in a sense, stamp-duties, for instances, in England, Estate Duty, Probate Duty and Succession Duty are stamp-duties because they are so collected; but I feel very great doubt whether a Court fee becomes a stamp-duty within the meaning of the Scheduled Taxes Rules, Schedule I, because it is collected by means of stamps. I think that the stamp-duties referred to in Schedule I mean some such duties as are imposed by the Indian Stamp Act, see section 3 of that Act, and do not comprise Court fees comprised in the Court Fees Act, even although in a sense they are stamp-duties as being paid by stamps. As to 3(h) the limitations extend only to those Acts set out in the Schedule to the Previous Sanction Rules, which does not, as already stated, contain the Court Fees Act. For these reasons in my opinion the first point fails and Bengal Act IV of 1922 is not *ultra vires* of the local Legislature, as no previous sanction was necessary.

I now come to the second point. On behalf of the Administrator General it is contended that the Bengal Court Fees (Amendment) Act, 1922, extends only to Bengal and that the Bengal Legislature cannot impose a tax on property in another Province. The real question is whether the enhancement of the court fees payable on a grant of Administration is a tax or merely a court fee. It is said that it is a tax or duty because this has to be paid before the Court exercises any jurisdiction in the matter and because, under the provisions of section 19 H (2) of the Court Fees Act, notice of the application has to be given by

the High Court to the Revenue-authority of the Province and because of the provisions for valuation in section 19A, E and F and the provisions for deducting debts in 19(B). The Advocate-General however, contends that it is merely a court fee and that if a man chooses to take out Probate or Administration in Bengal he must submit to the laws of the local Legislature, and that if the imposition is viewed as a court fee and not as a duty or tax it is quite immaterial where the property is situate. I think that this contention is correct, the sum charged upon a grant of Probate or of Letters of Administration is not a tax or duty levied upon the property upon which the Probate or Administration operates, and it is not charged thereon as is Estate Duty in England, but it is merely a fee levied by the Court issuing the Probate or Letters of Administration for the work done in this connection. And I do not think that this is any less the case because the fee is levied upon the value of the property.

In my opinion, therefore, the court fee was rightly levied at the enhanced rate on the value of all the assets, whether in this Province or outside.

Attorney for the Administrator-General: *W. J. Simmons.*

Attorney for the Revenue-authority: *Government Solicitor.*

N. G.

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