TESTAMENTARY JURISDICTION.

Before Remfry J.

1934

July 5,6,17.

In the goods of TARUNKUMAR GHOSH, *deceased.*

Court-fee—Exemption—Registrar's certificate under High Court (Original Side) Rules, Ch. XXXV, r. 4, where conclusive—Judicial presumption—Court-fees Act (VII of 1870), s. 19-H.

On the question whether or not correct court-fee has been paid on the estate of a deceased person, the certificate of the Registrar under rule 4 of chapter XXXV of the Rules, is conclusive, except where an application is made under section 19-H of the Court-fees Act.

In the goods of *Bhubaneswar Trigunait* (1) referred to.

In the goods of *Aratoon Stephen* (2) followed.

At the time, Tarunkumar Ghosh, a minor, died, Rs. 11,000 stood in deposit in his name at a post office savings bank. The minor's father had deposited this sum in the minor's name, although the money was his own. Furthermore, when so depositing the sum, the father had no intention of making a gift of it to the minor. It was only for the purpose of avoiding income-tax, for which he would otherwise be liable, that the father deposited the money in the minor son's name.

By rule 7 of the Rules of the post office savings bank "deposits in trust are not allowed, and cannot be recognised" and by rule 26 "every application for withdrawal from a minor's account must bear a certificate.....signed by the person making the application.....(in the form:) Certified that the amount sought to be withdrawn is required for the use of the minor."

The father stated in his evidence that he intended to withdraw the money before the minor attained majority by falsely certifying that the money was required for the use of the minor.

The question to be decided was whether the deposit was the property of the minor and this would be presumed from the father's knowledge of the above rules, or of the father, the minor being only the *benâmdâr* of the father which could only be if it be presumed that the father knowingly violated the rules framed under a statute.

Held that when a man may have acted rightly or may have acted wrongfully he cannot be heard to say for his own benefit that he acted wrongfully.

APPLICATION by the Collector of Stamp Revenue, Calcutta.

The facts of the case and arguments of counsel appear sufficiently from the judgment.

(1) (1925) I. L. R. 52 Calc. 871. (2) (1927) 32 C. W. N. 799.

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Standing Counsel, S. M. Bose (with him the *Advocate-General, A. K. Roy*) for the applicant.

Page for the respondent.

Cur. adv. vult.

REMFRY J. This is an application by the Collector of Stamp Revenue, Calcutta, under section 19-H, sub-section (*4*), of the Court-fees Act of 1870 as amended.

The facts are that one Manmathanath Ghosh opened an account in the Post Office Savings Bank in the name of his minor son, Tarunkumar Ghosh, as his guardian, and made deposits in his name amounting to some Rs. 11,000.

The son died a minor in October, 1932.

The father obtained letters of administration to the estate of his minor son in May, 1933.

In the affidavit of assets he set out this deposit, but in annexure B to the form of valuation as set out in schedule III to the Act he claimed that it was held in trust not beneficially or with a general power to confer a beneficial interest.

The Registrar of this Court granted a certificate under the Rules and Orders of this Court, chapter XXXV, rule 4, to the effect that no duty was payable.

Pausing here, it seems to me that when a claim of this sort is made, the Registrar should refer the matter to the Chief Justice. It is not a matter of valuation, but of exemption.

In the present application, it is alleged that the money was the money of the minor and court-fees are payable in respect thereof.

In my opinion, the certificate of the Registrar, though conclusive for certain purposes, does not preclude the Collector from applying under section 19-H. See *In the goods of Aratoon Stephen* (1).

In the case cited for the defendant—*In the goods of Bhubaneswar Trigunait* (2), Rankin J., as he then

(1) (1927) 32 C. W. N. 799. (2) (1925) I. L. R. 52 Calc. 871, 878.

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was, expressly reserved the point whether a certificate under rule 4 of chapter XXXV of the Rules of this Court, owing to section 5 of the Court-fees Act, "hampers the Collector in claiming more money under "section 19-H." The result is that the point was not decided, and, if I may say so, I agree with the decision of Costello J. in the first cited case. The certificate is conclusive in a court on the point as to whether the correct duty has been paid, except when an application is made under section 19-H of the Court-fees Act.

And, in my opinion, under section 19-H the Collector can challenge the validity of a claim of this kind. The valuation of the estate is under-estimated if part of it is wrongly exempted on the ground that it was held in trust. The valuation is for the purposes of assessing the duty payable, and such valuation is under-estimated if assets which should not have been excluded from that valuation, are excluded.

The question to be decided is whether in fact the deposit was the property of the minor or whether he was the *benâmdâr* of his father.

It is not disputed that the father made the deposit with his own money. It is admitted that the doctrine of advancement is not applicable to Hindus. The question is what was the intention of the father, and whether he can be heard to allege an intention which involves an assertion that he intended to act dishonestly.

The father gave evidence and he did not seriously allege that he was not aware of the rules, and really admitted that his intention was to withdraw the money before the son attained majority, and for that purpose to make a false declaration that he was withdrawing it for the use of the minor.

He stated that the minor was his youngest son, aged six or seven at the time, and that he himself had already deposited in his own name Rs. 21,500 in the post office and as he could only deposit another Rs. 1,000 in his own name he adopted the device of opening an account in the name of his minor son, so as

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to be able to deposit more than the rules permitted with a view to save income-tax. Apparently apart from his pay, he had no other asset, and he had six children, four girls and two boys. It is abundantly clear therefore that in fact he had no intention of giving this large sum to his youngest son. His intention clearly was to use the name of his son to obtain the benefit of an investment for himself in the post office.

In my opinion there is nothing to prevent the father from alleging that the transaction was for his own benefit, unless there is any rule which precludes him from being heard to say that he intended to act dishonestly. The position is otherwise that of an ordinary *benâmi* transaction, and there, unless the object of the transaction was fraudulent and succeeded, the parties can prove their actual intentions.

The position of an account in the name of a minor under rule 7 of the Post Office Rules is that no trusts are recognised. Under rule 26 no money can be withdrawn by a guardian unless he certifies that the money is withdrawn for the use of the minor, and when the minor attains majority payment is made to him.

The defendant, according to his own statement, intended to withdraw the money before the minor attained majority and to certify that the money was required for the use of the minor. That would have been a false statement according to the defendant himself. According to the decision in *Field* v. *Lansdale* (1), the mere fact, that the depositor had, in order to evade the rule that no one could deposit more than a stated amount in a Post Office Savings Bank, used the names of other persons, would not affect his right to the money deposited in excess of the stated limit. It does not appear that the depositor had to make a false statement in order to withdraw the money, and the only point for decision was whether there were trusts in favour of the persons whose names had been used.

(1) (1850) 13 Beav. 78; 51 E. R. 30.

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In *Chandanmull* v. *Donald Campbell & Co.* (1), Lord Sumner declined to assume in the favour of a party that he lacked honesty, and added "I cannot "assume" that.

Fletcher Moulton L. J. in *Hirachand Panamchand* v. *Temple* (2) declined to accept the evidence of the plaintiffs that they acted dishonestly and adds "I..... "shall presume that they.....(acted).....honestly".

In *Doolan* v. *Midland Railway Company* (3) Lord Blackburn said, "it does not lie in the mouth of the "railway company to set up its (own) illegality".

In this case the defendant seeks to allege that he opened an account with the intention of violating the rules of the post office; those rules being rules passed under an Act, he alleges that he acted illegally; he then alleges that he intended to make a false declaration; that was a dishonest intention, and I decline to accept his statement. I shall presume that he acted honestly and intended to act honestly.

Jessel M. R. in *In re Hallett's Estate. Knatchbull* v. *Hallett* (4) laid it down that "nothing can be better "settled, either in our own law, or, I suppose, the law "of all civilised countries, than this, that where a man "does an act which may be rightfully performed, he "cannot say that that act was intentionally and in fact "done wrongly.....Wherever it can be done right- "fully, he is not allowed to say, against the person "entitled to the property or the right, that he has done "it wrongfully".

Bowen L. J. in *Overseers of Putney* v. *London and South Western Railway Company* (5) said :—

> The rule (is) that no one is allowed in a court of justice, in order to escape from liability, to put forward a plea that that which he is doing is illegal.

In that case the defendant company alleged, in order to escape a tax, that they had exceeded their powers under a statute. Esher M. R. in the same

(1) (1916) 23 C. W. N. 707n, 714n.
(2) [1911] 2 K. B. 330, 339.
(3) (1877) 2 App. Cas. 792, 806-7.
(4) (1880) 13 Ch. D. 696, 727.
(5) [1891] 1 Q. B. 440, 443.

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case said "I think they (the company) cannot be "heard.....to say this". And Fry L. J. concurred.

In my opinion, the last cited case is very similar to the present case. There a railway company in order to escape the parish rates sought to allege that they had acquired land but not under their statutory powers, although the railway had no other powers.

Here the defendant, in order to escape paying duty, seeks to be heard to say that in order to escape illegally from paying income-tax, he wrongfully invested money in the name of his minor son, with the intention of recovering it by a false statement.

In my opinion, the rule is clear that when a man may have acted rightly or may have acted wrongfully, he cannot be heard to say for his own benefit that he acted wrongfully.

The result is that the claim that there was a *benâmi* transaction cannot be accepted and the duty in respect of the fund is payable.

Application allowed.

Attorney for applicant: *Government Solicitor.*

Attorney for respondent: *P. C. Palit.*

P. K. D.