

TESTAMENTARY.

1916
December, 4.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

IN THE GOODS OF MRS. E. E. W. MEIK.*

Act No. VII of 1870 (Court Fees Act), sections 19, viii; 19I; schedule I, No. 11, and schedule III - Court fee—Computation of duty payable on probate or letters of administration.

Held on a construction of the Court Fees Act, 1870, that no duty is payable in respect of a grant of probate or letters of administration where the value of the estate, after making the deductions specified in annexure B of the third schedule, is less than Rs. 1,000.

THIS was an application made by Mrs. A. S. Thompson, a sister of the deceased, for letters of administration to the estate of Mrs. E. E. W. Meik. The gross value of the estate was Rs. 1,426-3-3, but after deducting the amount of debts set forth in annexure B to the affidavit of valuation, the net value of the estate came to only Rs. 900-9-3. The applicant thereupon urged that, according to the provisions of section 19, viii, of the Court Fees Act she was not liable to pay any duty at all on a grant of letters of administration.

It was contended on behalf of the Board of Revenue that duty was payable on the gross value of the estate, or at any rate on the value of the residue after deducting the items set forth in annexure B of the affidavit of valuation, although such residue was below the value of Rs. 1,000.

Mr. A. H. C. Hamilton, for the applicant.

Mr. A. E. Ryves, for the Board of Revenue.

RICHARDS, C. J. :—A question has arisen as to the proper court fee payable in respect of this estate. It is admitted that the assets of the deceased, if no deductions are to be made for the debts or funeral expenses of the deceased, exceed Rs. 1,000 in value. On the other hand, it is admitted that if the debts and funeral expenses of the deceased are deducted, the assets are less in value than Rs. 1,000. The administratrix contends that no court fee is payable. On the other hand, the Board of Revenue contend that duty is payable either on the gross assets or on the net assets after deducting debts and funeral expenses. Section 19 of the Court Fees Act provides, *inter alia*, as follows :—“ Nothing contained in this Act shall render the following documents charge-

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able with any fee." Amongst the documents set forth is "Letters of administration, where the amount or value of the property in respect of which the letters shall be granted does not exceed one thousand rupees." It is admitted here that the court fee, if payable at all, is payable under the provisions of the Act. Section 19 I provides that no order entitling a petitioner to 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 third schedule, and the court is satisfied that the fee mentioned in No. 11 of the first schedule has been paid. Schedule I, No. 11, provides, amongst other things, that letters of administration are subject to a fee of Rs. 2 per cent. on the amount or value. The second column is a repetition of section 19, viii, providing that duty is payable when the amount or value of the property in respect of which the grant is made exceeds Rs. 1,000 but does not exceed Rs. 10,000. Schedule III contains the form of valuation referred to in section 19 I together with a form of affidavit to be made by the applicant. The first paragraph is a statement by the deponent that he has set forth in annexure A to the affidavit all the property and credits of which the deceased was possessed at the time of his death. Paragraph 2 is a statement by the deponent that he has set forth in annexure B all the items which by law he is entitled to deduct. Annexure B mentions, amongst the items which the administrator is allowed by law to deduct, the debts due from the deceased and payable by law out of his assets, together with his funeral expenses. At the end of annexure A, which contains particulars of the gross assets, the following words appear:—"Deduct the amount shown in annexure B not subject to duty" and concludes with the words "Net total." The argument put forward on behalf of the Board of Revenue is that section 19, viii, only permits letters being granted without a court fee where the amount or value of the property in respect of which letters of administration are granted does not exceed Rs. 1,000. It is contended that the letters of administration cover all the gross assets, and that therefore the duty must be paid on the gross assets; and that, even if this is not so, the duty is at least payable at the rate of 2 per cent. upon the gross assets after deducting such debts and other things

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as are permitted by law to be deducted. It seems to us that this last contention cannot be sustained, because either the duty is payable, as provided by the express words of the section, upon all the gross assets without any deduction or not at all. If section 19, clause viii, stood alone, this would appear to be the meaning of the provision, although no doubt it would appear to work some hardship. The duty is really payable by the persons beneficially entitled to the estate. We may give an example of the inequity that such a provision would appear to cause. A deceased person dies possessed of an estate worth Rs. 900 without any debts. The persons beneficially entitled to the estate pay no duty. Another man dies leaving a gross estate worth Rs. 1,500 but debts amounting to Rs. 600. The beneficiaries in this case must pay duty upon Rs. 1,500 although their interest in the estate is the same viz., Rs. 900. It is not easy to see why the beneficiaries in an estate like the last mentioned should even pay duty on Rs. 900, if the beneficiaries in the first mentioned escape. It remains to be considered whether upon the true construction of the Act, notwithstanding any hardship that may arise, duty is nevertheless leviable upon the gross value of the estate. We think that we are bound to read the schedules together with the Act. Section 19I, to which we have already referred, expressly provides that the petitioner for letters of administration must file a valuation in accordance with the third schedule, and that the fee is to be paid *in accordance with such valuation*. Again, turning to the third schedule, which contains the form for giving the valuation, the petitioner for letters of administration is stated to be allowed by law to deduct the debts, funeral and testamentary expenses, and in annexure A, which is headed "Valuation of the movable and immovable property of the deceased", the "net total" is made the total after deducting all the items which are set forth in annexure B, and which the petitioner for letters of administration is allowed by law to deduct. We think that on the true construction of the Act no duty is payable where the value of the estate after making the deductions specified in annexure B of the third schedule is less than Rs. 1,000. We accordingly hold in the present case, that the applicant is not liable for any court fee.