

## TESTAMENTARY JURISDICTION.

*Before Mr. Justice Ameer Ali and Mr. Justice Sale.*

IN THE GOODS OF ABDOOL AZIZ (DECEASED.)

*Practice—Probate—Immoveable property—The Court Fees Act (Act VII of 1870), Schedule I, No. 11.* 1896  
March 15.

Under No. 11 of Schedule I of the Court Fees Act duty is payable on the amount or value of the property in respect of which probate or letters of administration shall be granted, if the amount or value of such property exceeds Rs. 1,000.

In a case where property has not been reduced into possession at the time of taking out probate, and the right to it is the subject of a suit, it is permissible to declare the value of that property as not exceeding Rs. 1,000.

THE deceased was plaintiff in a suit to obtain possession of a house. At his death, which took place before the suit could be heard, he left a will by which he gave to the person therein named as the sole executor the house, the subject-matter of the suit. The sole executor thereupon applied for probate of the will, and in his petition stated that the testator had left no assets except the house, and prayed that he might be exempted from payment of probate duty until after the hearing of the suit for possession of the house, and that the payment thereof should depend upon the result of the suit. Under No. 11 of the first schedule of the Court Fees Act, a duty is chargeable on "the amount or value of the property in respect of which the probate or letters of administration shall be granted, if the amount or value of such property exceeds Rs. 1,000." The question raised was whether payment of such duty, the value of the house being admittedly over Rs. 1,000, could, under the circumstances, be postponed conditionally. The matter came before Mr. Belchambers as the Taxing Officer of this Court who, on 1st March 1896, made the following order:—

The deceased was plaintiff in a suit to obtain possession of a house. He died before the suit could be heard, leaving a will by which he gave the house to the person therein named as the sole executor. This person has applied for probate of the will. In his petition he says that the testator left no assets except this house, and prays that he may be exempted from paying probate

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duty until after the hearing of the suit for possession of the house, and that the payment thereof should then depend upon the result of the suit.

This duty, as prescribed under No. 11 of the first schedule of the Court Fees Act, is chargeable on "the amount or value of the property in respect of which the probate or letters of administration shall be granted, if the amount or value of such property exceeds Rs. 1,000."

The material facts admittedly were that it is sought to obtain probate in respect of a house, the intrinsic value of which exceeds Rs. 1,000.

The question then is whether payment of the duty chargeable under No. 11 in the first schedule of the Court Fees Act may, under these circumstances be postponed conditionally. There is no provision in the Act under which this may be done, though there is a special provision under which a refund may be obtained if the suit should fail.

As the result I can only treat this case as one to be dealt with under the general provisions of the Act. That being the view taken by me, the petitioner applied to the Board of Revenue and received the following reply:—

"I am to state that the matter is not really one for the Board to decide. The law makes no provision for postponement of payment of probate duty, but if the circumstances of the case have been correctly set forth by you, the executor would apparently be justified in declaring the present value of the estate to be under Rs. 1,000, and if he gains his case in the High Court he can apply under section 19a of the Court Fees Act to pay the proper duty."

The opinion of the chief controlling revenue authority of the province upon a question concerning revenue is entitled to the utmost weight; but as the question arises with reference to a case unprovided for in the Court Fees Act, and which has not received judicial consideration, it is proper that the question, which is one of general importance, should be submitted to His Lordship the Chief Justice under the provisions of section 5 of the Court Fees Act.

On 1st of March 1896 the question was referred by the Chief Justice to two Judges exercising original jurisdiction. Their judgment (AMBER ALI and SALE, JJ.) was as follows:—

It appears that the house respecting which the question as to payment of probate duty has arisen forms the subject-matter of a suit, which was instituted by the testator with the object of obtaining possession thereof, but during the pendency of which he died. He has left a will, by which he gives the property to the petitioner who is named as executor. The executor has applied for probate, stating that the testator has left no other assets, and prays that he may be exempted from the payment of probate duty, until after the decision of the suit in his favour.

The testator had a mere right of action in respect of the house, which he was seeking to enforce. The value of such a right it is, of course, impossible to determine. That right he devised to the applicant.

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As this is a case unprovided for under the Act, we may fairly take the value of the property for the purposes of the present application as not exceeding Rs. 1,000.

C. B. G.

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*Before Mr. Justice Sale.*

IN THE GOODS OF MARY HEMMING (DECEASED.)

*Letters of Administration—Succession Act (X of 1865), section 269—Powers under.*

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 March 31.

In an application for letters of administration *debonis non* :—

*Held*, it is not necessary to ask in the petition for leave to dispose of the property in any particular way. Section 269 of the Succession Act gives the Administrator full powers in this respect.

THIS was an application to the Court in its testamentary and intestate jurisdiction under the Succession Act for letters of administration *debonis non* to the estate of the deceased. In the prayer of the petition the petitioner inserted the following additional words, asking for liberty to dispose of the house which formed the estate, in respect of which grant of letters of administration was sought to be obtained :—

“With liberty to your petitioner to sell and dispose of the said house and premises No. 7, Bow Bazar Lane, aforesaid, at such price and upon such terms as to your petitioner shall seem fit.”

SALE, J.—This is an application under the Succession Act. The petitioner prays for letters of administration *debonis non*, with liberty to dispose of the house in respect of which the grant of letters of administration is sought to be obtained. I am prepared to grant letters of administration to the applicant. On such grant being made the property will vest in the applicant, and he will have power to dispose of it “in such manner as he may think fit.” This is a power given expressly by section 269 of the Succession Act. The fullest power of disposal being thus given by the Act itself, nothing further is required. Why, then, should the