

For these reasons it is clear that this application must be allowed.

I note that the respondent has already been successful in obtaining one document,—a copy of an order of the Assistant Commissioner of Income-tax in appeal, dated the 25th of April, 1927, marked exhibit 3. That document is inadmissible in evidence unless the plaintiff desires its retention.

This application will be allowed, and the order of the Assistant District Court set aside with costs, which, in view of the nature of the application sought to be revised I assess at ten gold mohurs.

DUNKLEY, J.—I agree.

APPELLATE CIVIL.

Before Mr. Justice Mosely, and Mr. Justice Dunkley.

SHWE KHOON v. MA SEIN NU.*

Letters of administration—Deceased a Chinese—Rival applicants, widow and son—Succession governed by Chinese customary law or Succession Act—Question unnecessary to decide—Widow entitled to administer.

In case of contested applications for letters of administration to the estate of a deceased Chinaman, when the applicants are a widow and a son, it does not matter whether the deceased was a Buddhist or a non-Buddhist or whether the succession to his estate is governed by Chinese customary law or the Succession Act, for in either case the proper person to obtain letters of administration to his estate is his widow, and other persons having claims to the estate must, if necessary, prosecute those claims in the form of a separate suit against the widow, either for their share or for the administration of the estate by the Court.

Maung Po Maung v. Ma Pyi Ya, I.L.R. 1 Ran. 161, approved.

U Kyaw (1) for the appellant.

Kyaw Myint for the respondent.

DUNKLEY, J.—These two appeals arise out of opposing applications for letters of administration to

* Civil First Appeals Nos. 106 and 110 of 1937 from the judgments of the District Court of Bassein in Civil Regular Suits Nos. 3 of 1937 and 8 of 1936.

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MA HLA
MRA KHINE
v.

MA HLA
KRA PRU.

MOSELY, J.

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 SHWE KHOON
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 MA SEIN NU
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the estate of a deceased Chinaman named Eik Seik Whet *alias* Ko Po Nyun. One application was made by his Burmese Buddhist widow, Ma Sein Nu, and the other by a person who alleged that he was an adopted son, Shwe Khoon. The main contest at the hearing of the applications centred round the question whether the deceased was a Chinese Buddhist or a Confucian. The learned District Judge held that the deceased was not a Chinese Buddhist, and that therefore the succession to his estate was governed by the provisions of the Succession Act : that consequently the widow was entitled to a one-third share of his estate, and, therefore, was the proper person to obtain letters of administration. He declined to go into the question whether the present appellant, Shwe Khoon, was an adopted son of the deceased or not.

Before us it is contended that on the evidence it should have been held that the deceased was a Chinese Buddhist : that consequently the succession to his estate was governed by the Chinese Customary law, and, therefore, if there was a son, the widow would be entitled to maintenance only out of the estate and the son would oust the widow ; hence letters of administration could not, under those circumstances, be granted to the widow. It was urged that for these reasons it was essential that the question of Shwe Khoon's adoption should be decided by the learned District Judge in the proceedings on the contested applications for letters. The matter, however, appears to be covered by the judgment of a Bench of this Court in the case of *Maung Po Maung and one v. Ma Pyi Ya (alias) Ma Thein Tin* (1). At page 168 of the judgment of Heald J. in that case there appears the passage :

“ If there are sons or daughters the widow has only a right to administer the estate and to be maintained out of it and a claim

(1) (1923) I.L.R. 1 Ran. 161.

on the estate for provision for her funeral, but the property vests not in her but in the children."

Reference, with approval, has been made to this case in at least two subsequent Bench decisions of this Court, and the correctness of this judgment of Heald J. never appears to have been doubted. The effect of it is that, so far as contested applications for letters of administration to the estate of a deceased Chinaman are concerned, when the applicants are a widow and a son, it does not matter whether the deceased was a Buddhist or a non-Buddhist, that is, whether the succession to his estate is governed by the Chinese customary law or by the Succession Act, for in either case the proper person to obtain letters of administration to his estate is his widow, and other persons having claims to the estate must, if necessary, prosecute those claims in the form of a separate suit against the widow, either for their share or for the administration of the estate by the Court. Hence in the particular appeals which are now before us the question whether the deceased was a Buddhist or not was really immaterial, so also was the question whether Shwe Khoon was an adopted son or not, for, whatever may be the facts regarding these two matters, the respondent is the person who is entitled to letters of administration. These appeals therefore fail and are dismissed with costs, advocate's fee five gold mohurs. There will be one set of costs for both appeals.

MOSELY, J.—I agree.

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