

CIVIL REFERENCE.

Before Currie J.

IN THE GOODS OF R. N. CLARK, deceased.

Probate Case No. 3 of 1931.

Court Fees Act, VII of 1870, Section 19-I and Schedule I, Article 11; Probate duty—payable on value of estate—on date of application—whether payable before application is entertained.

C having died on the 3rd August, 1929, his executors valued the estate as at 18th December of that year, actually presenting the petition on 29th January, 1930, and, the petition having been returned for probate duty to be deposited, this was done and the petition refiled on 10th April 1931—at which date, though values had depreciated, the accrual of subsequent dividends increased the net value of the estate.

Held, [following *In the estate of A. C. Macmillan* (1)], that the date to be taken for the valuation of the estate for the purpose of assessment to probate duty is the date on which the application for grant of probate is made, which in this case was the 10th April 1931.

In the goods of Major-General Millet, deceased (2), and *In the goods of Ezekiel Joshua Abraham* (3), distinguished.

Henderson's Law of Succession, 5th Edition, at page 502, referred to.

Held further, that Rule XXX (iv) of the Office Rules of the Chief Court of the Punjab, Part D, page 20 (Judicial), not having been superseded, payment of probate duty is calculated on the valuation to be presented by the applicant before the application is entertained, and in conformity with Section 19-I of the Court Fees Act, Court fees ought to be levied as a preliminary on the valuation put forward by the applicant for probate, though the duty chargeable may sub-

(1) (1912) 14 I. C. 804.

(2) 51 P. R. 1902.

(3) (1897) I. L. R. 21 Bom. 139.

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sequently be revised as a result of a reference made by the Collector under section 19-H of the Act.

Case referred by the Collector, Amritsar, under Section 19-H (4) of the Indian Court Fees Act, 1870, for orders of the High Court.

IN THE GOODS
OF R. N. CLARK,
DECEASED.

CARDEN-NOAD, Government Advocate, for the Crown.

EDMUNDS, for Respondents.

CURRIE J.

CURRIE J.—This is a reference made by the Collector of Amritsar, under section 19-H (4) of the Court Fees Act, regarding the valuation for probate of the estate of Mr. R. N. Clark, deceased. Mr. Clark died on the 3rd of August 1929. His executors valued the estate as at the 18th of December 1929. An application for the probate was presented apparently on the 29th of January, 1930, in this Court. This was returned and the applicant was directed to deposit probate duty. Eventually probate duty amounting to Rs. 6,240 was deposited and the application was re-filed on the 10th of April, 1931. In the meantime the value of certain stocks and shares had depreciated but certain dividends had accrued. The contention of the Collector is that probate duty should be assessed on the valuation as at the 10th of April, 1931. He accordingly claims an additional sum of Rs. 508-8-5. In addition to this a further sum is due on account of dividends on twenty-five preference shares and ten ordinary shares of the Bombay Steam Navigation Company, Ltd. A letter from the Agents, Messrs. Killick-Nixon & Co. has been produced by the learned Government Advocate which shows that three dividends have come to hand since the testator's death. Probate duty is claimed on account of two of them which were paid in the interval between the

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death of the testator and the 10th of April, 1931. The amount is : 25 Preference Shares.

Rs. A. P.

340 13 0 collected on 9th December 1929.

339 0 1 collected on 15th October 1930
 on account of 10 ordinary
 shares :—

125 0 0 collected on 9th October 1929, and

125 0 0 collected on 15th October 1930.

929 13 1

The accuracy of the Collector's calculation is not contested and the figures given by Messrs. Killick-Nixon & Co. are accepted by Mr. Edmunds who appears on behalf of the executors.

The point in issue between the parties is the date which should be taken for the purposes of the valuation. The Government Advocate contends that the date when the application for Probate was refiled, *viz.* the 10th of April, 1931, is the date that should be taken for the valuation of the estate. Mr. Edmunds for the executors contends that the date for the valuation should be the date of the testator's death or, in the alternative, the date when the application was first presented, *i.e.* 29th of January 1930.

As regards the first contention that the date for valuation should be the date of the testator's death, Mr. Edmunds contends that the probate of a will dates back to the death of the testator. He argues that the duty should be levied on the valuation of the estate as at the time it came into the executors' hands. In this connection he refers to *In the goods of Major-General Millet, deceased* (1), and *In the goods of*

Ezekiel Joshua Abraham (1). The first of these rulings merely dealt with the question of whether assets in England were liable to probate duty in India, and is not in point. The Bombay case dealt with a similar question concerning certain monies belonging to the testator's estate which at the time of his death were in Shanghai though some of the funds were subsequently transferred, before the application for probate was made, to Bombay. That ruling, to some extent, supports the contention put forward by Mr. Edmunds, but that ruling was given in 1896. The Court Fees Act was, however, amended by Act XI of 1899 which added section 19-I and schedule III, on which the learned Government Advocate relies. Section 19-I provides that no order entitling the petitioner to the grant of probate shall be made upon an application for such grant until the petitioner has filed in the 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 on such valuation. Schedule III prescribes the form of valuation. Clause I provides that all the property and credits in which the deceased possessed a right or was entitled to at the time of his death, and which have come or are likely to come, to the hands of the executor shall be duly set forth. Clause 3 provides for the valuation of the said assets exclusive only of the items which may by law be deducted but inclusive of all rents, interest, dividends and increased values since the date of the death of the said deceased. In the instructions under Annexure A for valuation of the moveable and immoveable property under head Property in Govern-

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ment Securities transferable at the Public Debt Office it is expressly provided that interest shall be shown separately calculated up to the time of making the application.

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From this it is clear that the probate duty is to be levied on the value of the estate as at the time of making the application. This was the view taken by the Financial Commissioner of Burma in a case reported as *In the estate of A. C. Macmillan* (1). In Henderson's work on the Law of Succession, fifth edition, by Alex. Kinney in commenting on section 289 of the Indian Succession Act at page 502, the learned commentator remarks:—

“ Schedule III of the Court Fees Act gives the form of affidavit to be sworn to by the applicant and it will be noted that this includes rents and dividends accrued due *since* the date of death. This differs from the procedure in England and the matter would appear to require reconsideration by the Legislature, as to my mind it is not accurate to say that income accrued due since the date of death are assets of the estate as at time of death.”

It is clear, therefore, that the date to be taken for the valuation of the estate for the purpose of assessment of probate duty is the date on which the application for grant of probate is made.

To come now to the question in the present case, whether the date of valuation should be the 10th of April, 1931, as contended by the Collector, or the 29th January, 1930, as contended for the executors. It is clear that the practice of this Court has been to insist on the payment of the probate duty calculated on the

(1) (1912) 14 I. C. 804.

valuation presented by the applicant before the application is entertained. This is in accordance with Rule XXX (iv) at page 20 of Office Rules of the Chief Court of the Punjab, Part D, Judicial Department, which apparently has not been superseded. It is clearly in conformity with the provisions of section 19-I of the Court Fees Act. That section provides for payment, in the first instance, of the fee on the valuation put forward by the applicant and in clause 2 provides that the grant of probate shall not be delayed by reason of any reference made by the Collector. Reading this section as a whole it is clear that Court fees ought to be levied as a preliminary on the valuation put forward by the applicant for probate, but the duty chargeable may subsequently be revised as a result of a reference made by the Collector under section 19-II of the Court Fees Act. In my opinion, therefore, the date to be taken of the valuation of the estate of the deceased for the purpose of the probate in the present case is the 10th of April, 1931.

The valuation of the estate must, therefore, be increased by the sum of Rs. 16,950-11-2, as calculated by the Collector, plus Rs. 929-13-1, the dividends received from the Bombay Steam Navigation Company, a total of Rs. 17,880-8-3. The executors will pay the costs of this reference.

N. F. E.

Reference accepted.

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