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J. M. EDMOND *v.* M. NIERSES

The opinion of the Officiating Chief Justice was as follows :—

NORMAN, J.—I think that, when the plaintiff, in order to make the proof referred to in section 281, chooses to examine the defendant, he must pay for the oath and the cost of reducing the deposition of the witness to writing. It would be otherwise under section 8 of Act XXIII of 1861, in which case the fee is apparently demandable, if at all, from the applicant.

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See also 14th B. L. R. 186.

IN THE GOODS OF PETER INNES (DECEASED).

Court Fees' Act (VII of 1870,) sch. I, cl. 11—Property on which there is a mortgage or Encumbrance.

THE following case was referred to the Chief Justice, under section 5 of Act VII of 1870, by Mr. Belchambers, the Taxing Officer of the Court :—

" On June 9th, 1871, letters of administration of the property and credits of Lieutenant-General Peter Innes, deceased, were granted by the Judge of Simla to the Secretary of the Simla Bank Corporation, as to a creditor, without notice to the Administrator-General, who, under section 15 of the Administrator-General's Act, 1867, is entitled to the letters of administration in preference to ' a creditor, legatee, other than an universal legatee, or a friend of the deceased.'

" It would seem that the property, in respect of which the letters of administration were granted, was taken to be of the value of Rs. 10,000, for it was on that amount that the *ad valorem* stamp of 2 per cent., prescribed by clause 11, schedule I of the Court Fees' Act, was paid.

" On 22nd August 1871, the Judge of Simla, on the application of the Administrator-General, cancelled the letters of administration so granted by him to the Secretary of the Simla Bank, subject to the costs, including the *ad valorem* fee of Rs. 200, being paid out of the assets of the deceased."

The property of the deceased is estimated by the Administrator-General to be of the value of Rs. 2,00,000, but, as stated by him, " there are mortgage charges and encumbrances to the amount of Rs. 1,53.000 and upwards.'

The Administrator-General, who has now obtained from this Court letters of administration of the property and credits of the deceased, submits that he is liable to pay probate duty in respect only of the difference between the above two sums of Rs. 2,00,000, and Rs. ,153,000. and that the amount payable as probate duty should be reduced by Rs. 200, that sum having been already paid in respect of the former letters of administration.

The opinion of the Officiating Chief Justice was as follows :—

NORMAN, J.—I am of opinion that, when letters of administration are granted in respect of property which is subject to a mortgage, the value of the property, for the purpose of estimating the *ad valorem* duty payable under the

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Court Fees' Act, 1870, is the value of that with which the Administrator is to deal, *viz*, the value of the entire property, less the amount of the encumbrance.

On the second question I think that the Government having received the *ad valorem* duty on a portion of the property under letters of administration which were valid until revoked, such *ad valorem* duty is not payable a second time. I think that the letters of administration to the Administrator-General should recite the former grant, and the fact of the payment of stamp duty thereon, and that credit should be taken for the payment of Rs. 200 *ad valorem* duty on the former letters in determining the stamp to be affixed to those now granted.

Before Sir Richard Couch, Kt., Chief Justice, and Mr. Justice L. S. Jackson

JARDINE (PLAINTIFF.) *v.* TARINI MOHAN SEN AND OTHERS (DEFENDANTS.)*

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Practice—Right of Reply.

An application for a review of the judgment of the lower Appellate Court was made on behalf of the plaintiff, on the ground that the Judge had dismissed the plaintiff's appeal, without hearing his pleader's reply.

The order of the Judge rejecting the application was in these words:—"This application is rejected with costs. The appellant's vakeel did not reply to respondent's vakeel, nor did he press his right to do so before the Court. The Court, therefore, in proceeding to give judgment at once violated none of the rules of practice of the Court, and consequently afforded no ground for a review of judgment."

The plaintiff, on special appeal preferred by him, urged as the 6th ground of appeal that the lower Appellate Court should not have dismissed his appeal after hearing the respondent's vakeel, without giving the appellant's pleader an opportunity to reply.

Before the special appeal came on for argument for the last time, the High Court had called for a certificate from the pleaders who were engaged in the appeal before the Judge, stating the circumstances under which the reply was not heard.

The three pleaders engaged in the case on behalf of the appellant, gave a certificate to the following effect:—When the case was being argued for the appellant, the Judge was with the appellant. "When the respondent's pleader was adressing the Court, the Judge was still with the appellant As soon as the respondent's pleader finished his argument, the Jndge, without hearing the reply, said he wouldgive his judgmentthe nextday. On this, the appellant's pleaders, being under the impression that the Judge's view was favorable to them, did not insist on being heard in reply."

* Special Appeal, No. 947 of 1870, from a decree of the Judge of Backergunge, dated the 7th April 1870, affirming a decree of the Subordinate Judge of that district, dated the 1st August 1868.