

## ORIGINAL CIVIL.

Before Sir Richard Garth, Kt., Chief Justice.

IN THE GOODS OF MURCH (DECEASED).

1879  
April 2.

*Administration—Fees—Liability of Property on which Duty paid in England to pay Duty in India—Court Fees Act (VII of 1870), sched. i, cl. 11.*

A testator died in England, and his executrix proved his will there, and then in this Court, paying duty in each country on the assets there. On the death of the executrix, the Administrator-General obtained letters of administration *de bonis non* of the testator's unadministered property, valued at a greater sum than the sum on which duty was originally paid in this country by the executrix, but which sum was made up of assets from England upon which duty had already been paid there,—*held*, that as the assets were within the jurisdiction of this Court at the time of the grant of administration, and the Administrator-General could not have obtained possession of them otherwise than by virtue of the grant, they were liable to the *ad valorem* fee prescribed by cl. 11, sched. i, of the Court Fees Act.

REFERENCE under s. 5 of Act VII of 1870 (Court Fees Act).  
The following reference was made in this case:—

“ The testator died at Plymouth in 1870 ; in the same year his widow, as the sole executrix, proved his will in the principal registry of Her Majesty's Court of Probate in England ; in the following year, she also proved the will in this Court ; and she paid probate duty on the estate in England, sworn under £2,000, and the *ad valorem* fee prescribed by cl. 11, sched. i, of the Court Fees Act, VII of 1870, on the estate in this country, valued at Rs. 8,160. The widow having lately died, the Administrator-General has now obtained from this Court letters of administration *de bonis non* of the testator's unadministered property and effects valued at Rs. 17,600.

“ The difference between the value of the estate in this country when probate was obtained from this Court in 1871, and its present increased value, is made up of assets obtained from England, and upon which duty has been paid there. As s. 19c, added to the Court Fees Act by s. 6 of Act XIII of 1875, which provides that the *ad valorem* fee shall not be twice payable in respect of the same property, applies to the property in respect

1879

IN THE  
GOODS OF  
MURCH.

of which probate was obtained from the Court in 1871, it is only necessary to consider whether or not the right to the *ad valorem* fee attaches to the assets subsequently obtained from England. In the hands of the executrix, by whom they were obtained under the probate granted in England, they were not liable to the payment of an *ad valorem* fee. They have, however, become liable to the payment of such fee, inasmuch as having, on the death of the executrix, been left within the jurisdiction of this Court, they form part of the property in respect of which the grant of letters of administration has now been obtained by the Administrator-General, and it is only by virtue of such grant that the Administrator-General is entitled to obtain possession of them—*The Attorney-General v. Dimond* (1), *The Attorney-General v. Hope* (2), *Logan v. Fairlie* (3), *The Attorney-General v. Bouwens* (4), and *The Attorney-General v. Pratt* (5).”

No Counsel appeared.

GARTH, C. J.—I am of opinion that, as the assets in question were within the jurisdiction of this Court at the time of the grant of administration, and the Administrator-General could not have obtained possession of them otherwise than by virtue of the grant, they are clearly liable to the *ad valorem* duty.

Section 19c of Act XIII of 1875 has no application to the present case, because the property in question has never yet paid any duty here under the Succession Act, and the fact of probate duty upon the same property having been previously paid in England by the deceased executrix, is no ground for exempting it from duty in the hands of the Administrator-General.

(1) 1 Cr. & J., 366.

(3) 2 S. & S., 284.

(2) 2 C. & F., 84.

(4) 4 M. & W., 171.

(5) L. R., 9 Ex., 140.