

TESTAMENTARY JURISDICTION.

Before Sir Francis William Maclean, Knight, Chief Justice.

IN THE GOODS OF RAM CHUNDER GHOSE (DECEASED.)

Court Fees Act (VII of 1870), Schedule I, Art. 11—Probate fee—Doubtful debt.

1897
May 3.

The uncertainty of recovering a debt due to the estate of a deceased person is not a sufficient ground for a proportionate reduction of the fee payable in respect of probate of a will.

THIS case was referred as follows by Mr. Belchambers, the Taxing Officer, for the decision of the Chief Justice under section 5 of the Court Fees Act (VII of 1870):—

“The testator in his will, dated 17th January 1895, mentions the following sums as being due to him :—

Rs.	11,000
„	7,700
„	8,800
„	1,400
„	3,100
„	100
	31,600
„	31,600

“In the petition for probate it is stated ‘that the amount of the estate and effects of the deceased, so far as your petitioners have been able to ascertain, and which are likely to come into your petitioner’s hands *after payment of his debts*, will not exceed the sum of Rs. 10,830-10.’

“Annexed to the petition is a schedule which contains—

“(1) ‘A list of immoveable properties.’

“(2) ‘A list of moveable properties *realizable*,’ in which, of the debts due to the estate, only one of Rs. 1,400 is entered.

“(3) ‘A list of *unrealizable* assets,’ in which the other debts due to the estate are entered.

“(4) ‘A list of debts due by the deceased.’

“Upon the facts so stated the petitioners submit that in calculating the amount of probate duty the debts due by the

1897

IN THE
GOODS OF
RAM
CHUNDER
GHOSE.

estate amounting to Rs. 5,800, and such of the debts due to the estate as are mentioned in the 'list of unrealizable assets,' amounting to Rs. 26,753, ought to be excluded.

"It has been held that the duty payable is to be calculated on the amount or value of the property, without deducting the debts due by the deceased—*In the Goods of Ram Chandra Das* (1). It does not follow that debts admittedly due by an estate will be paid. If and when paid a refund of duty may be obtained. This is provided for by section 19 B of the Court Fees Act, 1870, as amended by Act XIII of 1875.

"The first of the debts mentioned in the 'list of unrealizable assets' is the subject of a claim in an administration suit. It is uncertain what may be realized in respect thereof after payment of preferential claims. It is, therefore, a matter which may be dealt with according to the rule which was applied under similar circumstances in the case of *In the Goods of Abdool Aziz* (2).

"The other debts mentioned in the 'list of unrealizable assets' are judgment-debts not barred by limitation, but supposed to be unrealizable with reference to the present circumstances of the judgment-debtors. Exemption on similar grounds was disallowed in *In the Goods of Beake* (3). It is desired by the petitioners that this question should be reconsidered with reference to the case of *Moses v. Crafter* (4). In that case it was held that desperate and doubtful debts need not be included in the amount on which probate duty is payable. In the present case the debts in question being judgment-debts cannot be treated as doubtful. Whether they may be treated as desperate in the sense of being unrealizable is a question of fact. In *In the Goods of Beake* (3), to which I have referred, the uncertainty of recovering a debt was, as a question of general importance, referred to and decided by Couch, C.J., under section 5 of the Court Fees Act, 1870. That, under the terms of that section, was a final decision on a question of general importance, and is applicable to every similar case. It was not, I think, intended that a question of general importance should, after 'final decision,' be reconsidered except on other grounds. But

(1) 9 B. L. R., 30.

(2) I. L. R., 23 Calc., 577.

(3) 13 B. L. R. Ap., 24.

(4) 4 C. and P., 524.

at the request of the petitioners the case, so far as it relates to the uncertainty of recovering debts due to this estate, is referred to his Lordship the Chief Justice under section 5 of the Court Fees Act, 1870."

MACLEAN, C.J.—This case to my mind is governed by the decision of Sir Richard Couch in the case of *In the Goods of Beake* (1), from which I see no reason to differ.

S. C. B.

1897

IN THE
GOODS OF
RAM
CHUNDER
GHOSH.

APPELLATE CIVIL.

Before Sir Francis William Maclean, Knight, Chief Justice, and Mr. Justice Banerjee.

SRIHARI BANERJEE AND ANOTHER (PLAINTIFFS) v. KHITISH CHANDRA RAI BAHADOOR (DEFENDANT).^o

1897

March 11.

Res Judicata—Code of Civil Procedure (Act XIV of 1882), section 13—Landlord and tenant—Suit for rent—Question of title incidentally raised in a previous suit—Subsequent suit for declaration of title to land purchased.

A suit was brought by *A* against *B* and others for rent; and the matter directly and substantially in issue was as to what the share was for which *A* was entitled to rent. The plaintiff obtained a decree for the whole rent. In a subsequent suit by *B* and others against *A* for declaration of title to land purchased by them in execution of their mortgage decree, the defence was that the former decree for rent operated as *res judicata*: Held, that as the issue in the rent suit was for what share the plaintiff was entitled to rent and not to what share of the property was the plaintiff entitled as owner, the question of title could be said to have been in issue in that suit only incidentally and not directly, and it could not have been entertained in the form in which it was now raised; therefore the subsequent suit was not barred as *res judicata*.

Ran Bahadur Singh v. Lucho Koer (2) followed. *Radhamadhub Holdar v. Monohur Mukerji* (3) distinguished.

^o Appeal from Appellate Decree No. 288 of 1895 against the decree of Alfred F. Steinberg, Esq., Officiating District Judge of Nuddea, dated the 13th of December 1894, reversing the decree of Babu Debendra Nath Pal, Munsif of Ranaghat, dated the 8th of September 1893.

(1) 13 B. L. R., Ap., 24.

(2) I. L. R., 11 Calc., 301; L. R., 12 I. A., 28.

(3) I. L. R., 15 Calc., 756; L. R., 15 I. A., 97.