

Before Sir Richard Garth, Kt., Chief Justice.

1878
April 29.

IN THE GOODS OF RUSHTON (DECEASED).

Probate—Ad valorem Fee—Annuity charged upon Property of Testator—Court Fees Act (Act VII of 1870), sched. i, cl. 11.

Where it appeared that property disposed of by a will was bequeathed to the testatrix subject to the payment thereof of an annuity for life to a person who survived her,—*held*, that the *ad valorem* fee prescribed by sched. i, cl. 11, of the Court Fees Act ought to be levied upon the value of the property, less the capitalized value of the annuity.

THIS was a reference under s. 5 of Act VII of 1870, made by Mr. Belchambers, the Taxing Master of the Court:—

“ In this case a grant of probate of the will of the deceased has been obtained by her husband as the sole executor.

“ The facts material to the present question are, that the property disposed of by the will of the deceased was bequeathed to her by her late father, subject to the payment thereof of an annuity of Rs. 600 per annum for life to her brother, who is still living, and is now of the age of 50 years.

“ Upon these facts it is submitted, on behalf of the executor, that the *ad valorem* fee prescribed by No. 11, sched. i of the Court Fees Act, 1870, ought to be levied, not upon the apparent value of the estate, but upon its actual present value, to be estimated after making an allowance in respect of the annuity payable thereout.

“ To provide for the payment of this annuity, Rs. 15,000, at 4 per cent., would be required.

“ It appears from a volume of actuaries' tables, to which I have been referred by the executor's attorneys, that the present value of £1, payable at the death of a person aged 50 at 4 per cent., is 10s. 7d. At that rate the present value of £1,500 (the equivalent of Rs. 15,000) payable at the death of a person aged 50, at 4 per cent., would be £793-15, or Rs. 7,937-8.

“ The *ad valorem* fee is chargeable on the amount or value of the property in respect of which the probate, or letters, or certificate shall be granted,—that is, on the amount or value at

the time of the grant, and not at some future time; see the *Attorney-General v. Partington* (1), affirmed in error (2).

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“The actual present value of the property in the present case cannot be arrived at without deducting the value of the annuity.

“Proceeding upon the basis of the figures already given, the difference between Rs. 15,000 and Rs. 7,933-8, viz., Rs. 7,066-8, is the value of the annuity, and ought to be deducted from the total amount of assets. The balance after such deduction will represent the actual present value of the estate upon which the *ad valorem* fee is leviable.

“The value of an annuity of £60 per annum held on a single life, if calculated according to the tables in the schedule annexed to the Succession Duty Act (16 and 17 Vict., c. 51) would be £745-15-8, equivalent to Rs. 7,457-13, or Rs. 359-5 in excess of the value arrived at as the result of the calculation made according to the actuaries' tables.

“As the question is one of general importance, it is referred for final determination to the Honorable the Chief Justice, as required by s. 5 of the Court Fees Act, 1870.”

No counsel appeared to argue the point.

The opinion of the Chief Justice was as follows:—

GARTH, C. J.—It appears to me that Mr. Belchambers is perfectly right, and that the value of the property must be the value at the present time, less the capitalized value of the annuity.

(1) 1 H. & C., 457.

(2) 3 H. & C., 193.