

[Full Bench.]

1906.

November 24.

Present : Sir Joseph T. Hutchinson, Chief Justice, Mr. Justice
Wendt, and Mr. Justice Wood Renton.

SILVA *v.* WEERASURIYA.

C. R., Galle, 3,849.

*Letters of administration—Omission to include property in the inventory—
Powers of administrator as regards such property—"Duly stamped"—
Civil Procedure Code, ss. 540 and 547—Stamp Ordinance (No. 3 of
1890), ss. 7 and 24.*

An administrator is not entitled to maintain an action in respect of property which is not mentioned in the inventory, and the value of which has not been included in the sum on which stamp duty has been paid.

Hunt v. Stevens (3 Taunt 113) followed.

HUTCHINSON C.J.—In such a case the letters of administration are not "duly stamped" within the meaning of section 547 of the Civil Procedure Code.

THE plaintiff, as administratrix of the estate of one Odiris Silva, deceased, sued the defendant on a mortgage bond for Rs. 150 and interest. The defendant admitted the bond and pleaded payment, and also denied the right of the plaintiff to maintain the action on the ground that the letters of administration were not "duly stamped" within the meaning of section 547 of the Civil Procedure Code.

The Commissioner of Requests (G. A. Baumgartner, Esq.), upheld the objection and dismissed the plaintiff's action.

The plaintiff appealed.

Walter Pereira, K.C., S.-G., for plaintiff, appellant.—The question in this case is whether an administrator's action on a bond in favour of his intestate must necessarily fail simply because he has omitted to mention the bond in the inventory filed in the administration proceedings, and stamp duty on that asset has, so far, not been paid. Section 547 of the Civil Procedure Code enacts that an action cannot be maintained for the recovery of any property belonging to the estate of an intestate unless duly stamped letters of administration have been issued. In the present case can it be said that the letters were "duly stamped"? It is submitted it can. The provision of the law to be considered is section 24 of the Stamp Ordinance. That section provides that letters of administration are not to be issued until the applicant has filed an affidavit as to the value of the

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property of the estate to the best of his knowledge, information, and belief. It further provides that he should pay into Court stamp duty in accordance with such valuation, and that, then, the stamp duty and letters are to be sent to the Commissioner of Stamps, who should cause the letters to be duly stamped. We have the expression "duly stamped" here, to which reference is made in section 547 of the Civil Procedure Code. It is thus clear that when letters are stamped in accordance with the affidavit to be filed by the applicant for administration they are "duly stamped," and an action by the administrator in respect of any property of the intestate cannot thereafter fail in terms of the provision of section 547 of the Code. It may be that the particular asset for the recovery of which the action has been instituted has not been taken into account in the valuation in the affidavit. The letters are *pro tempore* "duly stamped." There is provision for supplying deficiency on discovery of fresh assets in section 26 of the Stamp Ordinance. English authorities cannot be said to apply unless it is clear that the English Law as to stamping letters of administration is the same as the above. There is, moreover, a provision in section 540 of the Code which makes it clear that where no limitation is expressed the power conveyed by the issue of a grant of administration extends to every portion of the deceased person's property within this Colony. [WOOD RENTON J.—That section appears to be intended to contrast the effect of an unlimited with that of a limited administration.] That, it is submitted, is too narrow a view to take of the scope of that section. If that was all the meaning of that section, there was no necessity for the section at all. The Code, in section 399, clearly defines the limitations in a limited grant, and merely for purposes of contrast section 540 would have been unnecessary. Section 540 contemplates the very class of cases within which the present falls. There is no such provision in English procedure, and English authorities would not for that reason also apply. Besides, in all the English cases on the subject it will be seen that the action was in respect of a sum far in excess of the full value in respect of which administration was granted. That is not so in the present case. The amount sworn to in the affidavit in the administration proceedings is far in excess of the amount of the bond in question. If the view of the District Judge be upheld, the decision will go a great way towards unsettling titles to property in the country.

A. St. V. Jayewardene, for the defendant, respondent.—The question must be decided according to the English Law. The Stamp Ordinances of Ceylon, the first of which was enacted in the year 1848 (Ordinance No. 2 of 1848), and the one in force at present

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(Ordinance No. 3 of 1890), have been borrowed from the English Acts 48 Geo. III. c. 149 and 55 Geo. III. c. 184 (1815), and the sections dealing with stamp duty on grants of probate and letters of administration have been reproduced almost *verbatim* from the English Acts. By these acts no instrument not duly stamped can be given in evidence [9 & 10 Wm. III. c. 15 § 19 and 55 Geo. III. c. 184 § 8]. This prohibition has been reproduced in section 7 of Ordinance No. 3 of 1890. Under the English Law it has been held that owing to this prohibition, if an executor or administrator shows that he sues for a greater value than the amount of the deceased's effects as shown by the letters of administration, he cannot recover. Therefore he cannot sue for property not included in the inventory, and for which no stamp duty has been paid, *Hunt v. Stevens* (1). In the course of the argument in *Attorney-General v. Hope* (2), Lord Brougham C. said: "That case (*Hunt v. Stevens*) removes my doubt whether it was not sufficient that the representative character was once conferred. That decision goes the length of showing that not having the proper stamp the administrator has no means of proving his representative character at all, and that the instrument has no more effect than if it had not been stamped at all." Again, at page 553, His Lordship observed: "The result of the case of *Hunt v. Stevens* and the other case which was mentioned is this: 'The Courts in such cases say: It is true you are clothed with this representative character; but it is only to an extent to which you have paid the duty. You cannot ask for more than the amount. If you do, you are suing in a character which is not conferred on you.' " Also see *Howard v. Prince* (3); *Christian v. Devereux* (4); *Carr v. Roberts* (5); and *Williams on Executors, vol. I., p. 538, 9th edition*. Under section 547 of the Civil Procedure Code no action can be maintained for the recovery of property belonging to the estate of a deceased person unless probate or letters of administration "duly stamped", are first obtained. The term "duly stamped" is defined in section 8 of Ordinance No. 3 of 1890, and includes the payment of the proper amount of stamp duty. In the present case the proper amount of stamp duty has not been paid; therefore the plaintiff's letters are not "duly stamped," as required by section 547. If the deficiency is subsequently paid, probate is good by relation, but in this case plaintiff is not entitled to an opportunity to have the letters re-stamped, as it has been held insufficient to sue out new letters on a larger stamp after judgment has been obtained [*Hunt v. Stevens; Christian v. Devereux (ubi supra)*]. Section 540 of the Civil

(1) (1810) 3 *Taunt.* 113.(3) (1847) 10 *Beav.* 312.(2) 1 *Cr. M. & R.*, pp. 542, 553.(4) (1841) 12 *Sim.* 264.(5) (1831) 2 *Barn & Ad.* 907.

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 November 24. the right of the executor or administrator to deal with property
 situate not only within the jurisdiction of the Court that granted
 administration, but anywhere in the Island.

C. M. Fernando, C.C., for the Crown.—The words “duly stamped” in section 547 of the Civil Procedure Code have a larger meaning than they have in section 24 of the Stamp Duties Ordinance. In the latter it is the duty of the Commissioner of Stamps to affix a stamp of an amount proportionate to the amount declared by the applicant as the total value of the estate. It is then “duly stamped” under section 24, although section 26 shows that it may be improperly stamped, and prescribes the proceedings if too little stamp duty has been paid. The words “duly stamped” in section 547 of the Civil Procedure Code have a larger meaning, and include “properly stamped.” To give it another meaning would be to encourage administrators to defraud the revenue by allowing them to omit specific items of the intestate’s property from the inventory and valuation, and yet to permit them in their capacity as administrators to sue in respect of such property. In this case the revenue has suffered by the exclusion of the mortgage bond, and it therefore cannot be said that the letters have been “duly stamped” within the meaning of section 547 of the Civil Procedure Code.

24th November, 1906. HUTCHINSON, C.J.—

The plaintiff sues as administratrix of the estate of the late Odiris de Silva to recover for payment of a debt of Rs. 150 principal and Rs. 146 interest due from defendant to the deceased on a bond and mortgage.

The defendant admitted that the plaintiff is the administratrix, and admitted the bond and mortgage, but pleaded that nothing was due thereon, and that the action is not maintainable because the letters of administration are not duly stamped.

The Court of Requests found—and it seems to be the fact—that the inventory filed by the plaintiff, though it has been amended three times, does not include this debt, and that the value of this debt is not included in the sum on which the stamp on the grant of administration was paid. He said that there were indications that the administratrix was trying to recover on bonds without including them in her inventory, in order to avoid payment of duty. He found that the bond had not been discharged, but he dismissed the action because the letters of administration were not duly stamped.

The plaintiff appeals from that judgment.

The enactment on which the Commissioner relied is section 547 of the Civil Procedure Code, which enacts that "no action shall be maintainable for the recovery of any property, movable or immovable, in Ceylon, belonging to or included in the estate or effects of any person dying testate or intestate in or out of Ceylon, where such estate or effects amount to or exceed in value the sum of Rs. 1,000, unless grant of probate or letters of administration duly stamped shall first have issued to some person or persons as executor or administrator of such testator or intestate."

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It cannot be denied that the plaintiff's letters of administration are not duly stamped, and therefore this action must fail.

Perhaps it would have been right for the Commissioner of Requests to adjourn the case so as to give the plaintiff an opportunity of getting the grant duly stamped. But the plaintiff made no application for that purpose, and has not applied to us to send the case back for that purpose. I think, therefore, that the appeal should be dismissed with costs.

WENDT, J.—

When this case first came before me I was inclined to doubt whether, so long as the letters of administration remained unrecalled, the Court dealing with an action by the administrator could enter into the question whether sufficient stamp duty had been paid on the letters. The question is one of revenue to the Crown, which is entitled to a certain rate of duty on the true value of the estate. Proof that the asset sued for was not included among those on which duty was paid does not establish that the true value was greater than that stated, inasmuch as assets might have been included which did not belong to that estate. It is *prima facie* proof no doubt, but would plaintiff in rebuttal be entitled to enter into proof of the inclusion of what I may, for shortness' sake, call "false assets"? Where would such an inquiry end? I find, however, that in this case no such explanation was suggested. In fact, it was not seriously contended that the letters did not bear the amount of duty they should have borne.

I agree therefore in thinking that the Court below was right in entertaining the objection and in holding that for the purpose of this case plaintiff was not the administratrix of the obligee. The Court below should, I think, have given the plaintiff an opportunity of having her letters duly stamped, but I will not dissent from the conclusion arrived at by the rest of the Court, viz., to dismiss the appeal and leave it to the plaintiff, if so advised, to sue again when her title has been put in order.

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In my opinion the decision of the learned Commissioner of Requests should be affirmed. The question at issue is whether an administrator can sue for a *chose in action* belonging to his intestate, but not included in the inventory of that intestate's property, or covered by the amount of the stamp duty paid on the letters of administration. It appears to me that the question must be answered in the negative.

Section 547 of the Civil Procedure Code expressly limits the power of an administrator to maintain an action for the recovery of property belonging to the estate to cases in which his letters of administration have been "duly stamped." I think the words "duly stamped" mean that the grant has been impressed with "the proper and full stamp duty" referred to in section 24 of "The Stamp Ordinance, 1890" (No. 3 of 1890), and see also section 7. This interpretation of section 547 is in accordance with the English Common Law of Executors and Administrators which is in force in Ceylon.

As far back as 1810 it was held by the Court of Common Pleas in the case of *Hunt v. Stevens* (1), in the construction of the statute 48 Geo. III. c. 14, which bears a strong resemblance to the Ordinance of 1890, that if an administrator shows that he sues for a greater value than is covered by the *ad valorem* stamps of his letters of administration, he cannot recover, even if the claim is doubtful. The decision has been followed in a series of equally clear authorities. In *Carr v. Roberts* (2) it was held to apply to a contingent claim for damages for default in payment of an annuity. In *Christian v. Devereux* (3) Sir Lancelot Shadwell V. C. refused to grant even a stop-order as to a fund in Court on insufficiently stamped letters of administration. In *Howard v. Prince* (4), where the plaintiff sued to recover a large unliquidated sum due to the testatrix, but the stamp on the probate did not cover the amount claimed, Lord Langdale M.P. refused a decree even for accounts and inquiries until the probate had been properly stamped. I do not see that there is anything in section 547 of the Civil Procedure Code to exclude the application of these decisions in Ceylon. It merely declares the effect of an unlimited as contrasted with that of a limited administration, and throws no light on the question as to what power of administration is conveyed by the issue "of the grant." In order to answer that question we must fall back on the Common Law. It is true that the view of the law which the English authorities constrain us to adopt may give rise to hardship in particular cases. But the great balance of convenience is in its favour.

(1) (1810) 3 *Taunt.* 113.

(2) (1831) 2 *Barn. & Ad.* 905.

(3) (1841) 12 *Sim.* 264.

(4) (1847) 10 *Beav.* 314.

A contrary interpretation of the law, as the learned Commissioner of Requests has pointed out, would encourage the practice of omitting debts from the inventory on the chance of recovering them privately without paying any stamp duty on them at all. I do not think that the appellant should be allowed an opportunity, such as was given in several of the English cases above referred to, *e.g.*, *Howard v. Prince*, of rectifying her mistake in the present action. She has elected to fight the issue of law both in the Court below and here on appeal, and should be held to her election.

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Appeal dismissed.
