

## APPENDIX.

*Re Last Will of RIGBY.*

*D. C., Kandy, 2,104.*

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*Stamp duty—Ordinance No. 3 of 1890, ss. 24 and 37, and Part III.—Value of estate of deceased—Assessment of duty, on gross or nett value of estate.*

The deduction of the debts due by the deceased on mortgage or other notarial bonds should be made only on the duty leviable on the probate of the will or the letters of administration, and not on the duty leviable on the documents enumerated in Part III. of the Schedule B of the Ordinance No. 3 of 1890.

IN this case the Secretary of the District Court of Kandy brought to the notice of the Judge (Mr. J. H. de Saram) that the appointment of the proctor made (under section 27 of the Civil Procedure Code) by the petitioner applying for letters of administration, with copy of the will annexed, of the deceased James Rigby, bore stamps of the aggregate value of Rs. 12, and that the affidavit sworn to by the applicant also bore stamps of the same value, notwithstanding the averment in the said affidavit that the estate of the deceased in Ceylon was worth Rs. 25,175, according to which the stamps should be of the value of Rs. 14 in the case of each of these documents.

It appeared that the proctor for the applicant affixed stamps on the basis of the nett value of the estate said to be equal to Rs. 17,175, deducting from the gross value (Rs. 25,175) the amount due by the deceased on a mortgage (Rs. 8,000).

After hearing Mr. Proctor Borrett for the petitioner, the District Judge (Mr. J. H. de Saram) held as follows, on 26th June, 1899:—

“ Mr. Borrett has acted contrary to the practice prevailing in this Court and in the District Court of Colombo.

“ Sections 24 to 30 of ‘ The Stamp Ordinance, 1890, ’ relate only to the stamp duty payable on probates and letters of administration. Section 24 enacts the mode in which the stamp duty is to be ascertained, and when it is paid the amount has to be transmitted by the Judge to the Commissioner of Stamps, together with the probates or letters of administration, in order that the document may be duly stamped. No mention is made there of the documents referred to in Part III. Then, section 30 provides for the return of stamp duty on probate and letters of administration, and not on any other document, on account of debts paid other than debts due on mortgage or notarial bonds, implying thereby that the deduction to be made under section 24 for debts due on mortgage

1899. or notarial bonds relates only to the stamp duty on probate and  
September 20. letters of administration. The deficiency in stamps should be  
 supplied. ”

Mr. Proctor Borrett supplied the deficiency.

On the 18th September, 1899, Mr. Borrett, for the petitioner, moved  
 “ that the Court do order that the stamp duty on the pleadings in  
 this case be calculated on the value of the estate of the deceased,  
 less debts due on mortgage bonds. ” He cited section 24 of Ordinance  
 No. 3 of 1890, and contended that the reference made in  
 section 57 to section 24 implied that the deduction to be made on  
 account of mortgage debts referred to the stamp duty on the  
 proceedings generally, as well as on probates and letters of  
 administration; that the object of the whole Ordinance was to  
 ascertain the true value of the estate, that is to say, the value after  
 deducting debts; and that section 24 should be read together with  
 Part III. as respects duty on probate.

*Fernando, C.C.*, on behalf of the Attorney-General, was heard  
*contra.*—Section 24 provides for ascertaining of the value of  
 probate duty by first determining the value of the assets and  
 then deducting therefrom the debts due on mortgage or on notarial  
 bonds. The under-valuation referred to in section 57 relates to  
 the first thing to be done under section 24, viz., the valuation of  
 the assets. Section 57, excluding from its operation probates  
 and letters of administration, implies that the amount of stamp  
 duty payable on other documents is calculated on the full value  
 of the assets, as declared by the applicant under section 24.  
 According to Part III., the duty payable is on the full value  
 of the estate, except on probates and letters of administration, in  
 respect of which mortgage debts and debts on notarial bonds have  
 to be deducted.

*Cur. adv. vult.*

On the 20th September, 1899, the District Judge (Mr. J. H. de  
 Saram) held as follows:—

“ The question again raised by Mr. Borrett is whether the  
 deduction of the debts due by the intestate on mortgage or on  
 notarial bonds should be made only in the assessment of stamp  
 duty on probates and letters of administration, or whether it should  
 be made also in respect of the duty on the other dutiable docu-  
 ments enumerated in Part III. of ‘ The Stamp Ordinance, 1890. ’

“ This question was before me a few months ago in these very  
 testamentary proceedings, and I then decided that the deduction  
 should be made only in the assessment of the duty payable on  
 probates and letters of administration. Mr. Borrett has asked me  
 to reconsider the question, and invited my attention to section 57.

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I directed notice of the motion to be given to the Attorney-General, as it is a matter of stamp duty, which is of concern to the Crown, and as I desired to have the Attorney-General's assistance in the argument.

" Section 57 imposes the duty on the Secretary of every District Court of furnishing to the District Judge quarterly statements showing the deficiencies of stamp duty in respect of every instrument other than probates or letters of administration, and proceeds to enact that ' whenever the District Judge is satisfied that too little stamp duty has been paid in respect of any such instrument, whether by reason of the property having been under-valued when originally valued as required by section 24, or otherwise, the District Judge shall require the party who tendered such instrument to make good the deficiency of stamp duty, and shall enforce payment of the same by writ (free of stamp duty) of execution against the property and person of such party.

" Mr. Borrett argued that the reference to section 24 in section 57 implies that the deduction to be made on account of mortgage or on notarial bonds relates to the stamp duty on testamentary proceedings generally, as well as on probates and letters of administration. Section 57 is, I think, capable of having the construction placed on it that it nullifies the other provisions of the Ordinance, but it is also open to the construction put on it by the Crown, viz., that the under-valuation of the property in section 57 is the valuation of the movable and immovable property for the purposes of section 24 prior to the deduction of debts due on mortgage or on notarial bonds. That section enacts the mode in which the stamp duty on probates and letters of administration is to be ascertained, viz., by first determining the value of the deceased's property, and then deducting therefrom debts due on mortgage or on notarial bonds. The valuation of assets is for the purpose of determining the stamp duty on testamentary proceedings generally, viz., the duty payable under Classes 1, 2, 3, and 4 of Part III. That valuation being ascertained, the deduction of debts on mortgage and notarial bonds is made therefrom, for the purpose of ascertaining the duty on probates and letters of administration, in the concluding portion of Part III. This is the conclusion I come to on reading sections 24 and 57 and Part III. of the Ordinance together. I may add that this is in accordance with the practice prevailing in this Court, and, as I understand, also in the District Court of Colombo.

" I refuse Mr. Borrett's motion. The deficiency of stamp duty on the oath of office should be supplied. "

The petitioner did not appeal against this order.