

REGISTRAR'S CIRCULAR NO: 7/50.

Petitions for Letters of Administration

The jurisdiction of the Registrars to determine petitions for letters of administration of estates between \$3,000 and \$5,000 in value, is not taken away by the Administration of Small Estates Ordinance, 1949, as regards petitions pending when the amendment came into operation.

The jurisdiction is determined by the value of the estate as at the date on which the petition or application is filed.

A petitioner may, if he wishes, with the leave of the Court, withdraw such a petition in order to make an application to the Collector for Distribution.

The following paragraphs are extracted from the considered judgment of Mr. Justice Taylor in Re Ch'ng Tiam Swee, deceased - Selangor L.A. Petition No. 307/49:-

Ch'ng Tiam Swee died intestate at Pulau Ketam, Selangor, on 10th May, 1949, leaving three lots of Mukim Register land.

On 16th December, 1949, his eldest son filed in the High Court at Kuala Lumpur a petition for letters of administration in which the net value of the estate was sworn at a little more than \$3,000.

By section 178 of the Probate and Administration Enactment, Cap. 8, the Collector of Land Revenue has exclusive jurisdiction over "small estates", which are defined as estates including some immovable property and not exceeding \$3,000 in total value.

On 31st December, 1949 this limit was raised to \$5,000 by the Administration of Small Estates Ordinance, 1949.

On 5th January, 1950 the petition came before the Senior Assistant Registrar who held that the estate was then a "small estate". As the amending Ordinance contains no saving clause regarding pending applications he doubted whether the Court could deal with the petition and adjourned the matter. Later, he formally referred the question to a Judge for a decision, and as several cases involving a similar question had arisen, the Chief Justice invited the Attorney-General to take part in the argument.

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In my opinion section 177, when construed in the light of its context, is decisive of the question. A "small estate" is defined as an estate including some immovable property and not exceeding \$5,000 in total value.

for distribution or administration". This fixes the date at which the estate is to be valued for the purpose of determining the jurisdiction.

In a different case I have already ruled (the point being in that case vital) that the date in question is the date on which the application is filed, not the date on which it was sworn or signed by the applicant.

The words "application for distribution or administration" require special exposition. It is true that the Collector can grant letters of administration but the whole policy of the chapter is to lead to immediate distribution, disposing of the whole matter at one hearing, as opposed to the ordinary Court procedure of an application for administration followed at a later date by an application to approve distribution. In a distribution case a party may apply orally at the hearing for letters of administration but the definition clearly refers not to anything of that nature but to the written application and the prescribed forms make it clear that this application must be for distribution, whatever the wish of the applicant may be. The expression quoted is an ellipsis and really means:- "at the date of filing the petition to the Court for administration or the application to the Collector for distribution, as the case may be".

I therefore rule on the reference that the Registrar still has jurisdiction to determine this pending petition.

Where the jurisdiction depends on value, the correct way to resolve any doubt or to deal with a border-line case is as follows.

If a petition is filed in Court the Registrar examines it and if it is, on its face, in order and the estate is sworn at upwards of \$5,000 and the Registrar accepts that as sufficient evidence of value, then the jurisdiction is determined and the matter proceeds in Court.

If the Registrar doubts the accuracy of the valuation he should refer the matter to the Collector who will then make his own estimate of the value as at the date of filing the petition. If the Collector values the estate, as at that date, at \$5,000 or under, then the estate was a small estate, and the Court had no jurisdiction. The petitioner would be advised to apply to the Collector for distribution.

Conversely, where an application is filed in a Land Office, the Collector determines the value of the whole of the estate, not merely of the land, as at the date of filing and if he finds it to exceed \$5,000 he rejects the application and refers the applicant to the Court.

The valuation by the Collector is, for the purpose of jurisdiction, conclusive, section 183.

It is true that if, in such a case as that last mentioned, the petitioner waited for a long time before filing his petition and meantime the value of the property fell, the Registrar might rule that the estate had become "small" and send the applicant back to the Collector but this would very rarely occur. The valuation is made for a special purpose and need not closely follow the fluctuations of markets. The valuation must stand for a reasonable time and provided that the applicant acts within that time there will be no difficulty. If an applicant delays the matter unnecessarily

There is, however, one situation where the applicant may have a choice of forum. If, as in the present case, a valid petition is pending and when it comes on for hearing the jurisdiction has been raised or the value has fallen so that the estate is then within the limits of a "small estate" it is open to the petitioner to apply to withdraw his petition in order to apply to the Collector for distribution. It is true that the fees already paid would be lost but the Collector's fees are low and there might well be both a substantial saving of money and much greater convenience for the parties. In such a case I think the Court would usually grant leave.

I offered to do so in the present instance but the petitioner preferred to go on with his petition.

There is another point on valuation which has sometimes caused difficulty. The Collector of Estate Duty values the estate as at the date of the death. The Collector of Land Revenue values it as at the date of the petition or application. There may be a long interval during which value may alter greatly. This does not matter. For the purpose of determining the jurisdiction, the Estate Duty valuation is wholly irrelevant. Of course, if the later valuation shewed a big difference it should be checked, lest a serious error had occurred in one or the other.

It follows from what I have said that the first line of section 178 is in conflict with section 179 and with the other provisions of the Chapter. Section 178 means and ought to say:- "All applications for distribution of small estates"

A further difficulty to which my attention has been called arises from section 177A which explicitly abolishes the jurisdiction of the Court, except on appeal or case stated. It would seem that the proviso to section 180 is repealed by necessary implication. This is of considerable practical importance because it means that the Collector of the district where the greater part of the property is situated is the only one who can possibly deal with the case, no matter how inconvenient it may be, and it may be extremely difficult for a Collector to determine where e.g. an insurance policy is situated. The raising of the limit to \$5,000 greatly increases the number of cases in which such problems will arise.

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C.H. Williams

REGISTRAR.

The Federal Registry,
Supreme Court,
Federation of Malaya,
Kuala Lumpur, 1st April, 1950.
(RSC.14/50)

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