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section 79 of the Negotiable Instruments Act, and a ruling reported as *Mt. Bhagwanti v. Atma Singh* (1), and contended that the trial Court was, under the law, bound to allow interest at the contractual rate from the date of the suit till realisation.

I am afraid I cannot accept this contention. A bare reading of section 79 of the Negotiable Instruments Act, shows that the award of interest after the date of the suit is within the discretion of the Court and I am not prepared to hold that in this particular case the discretion has, in any way, been wrongly exercised by the trial Court, because I find that the respondent has already paid practically twice the amount originally advanced by the appellant to him.

I have also gone through the ruling relied upon by the learned counsel for the appellant, but I find that it does not support his contention. The head-note of this ruling, however, is somewhat misleading.

I would, therefore, dismiss this appeal but, in the circumstances of the case, make no order as to costs in this Court.

G. D. Khosla,
C.J.

G. D. KHOSLA, C. J.—I agree.

B. R. T.

CIVIL MISCELLANEOUS.

Before D. Falshaw and A. N. Grover, JJ.

MURAT SINGH,—Petitioner.

versus

THE CONTROLLER OF ESTATE DUTY DELHI,—Respondent.

Estate Duty Reference No. 1 of 1959

1960

March 21st

Estate Duty Act (XXXIV of 1953)—S. 2 (15)—Property Whether includes 'verified claim' under the Displaced Persons (Claims) Act (XLIV of 1950)—Displaced Persons Compensation and Rehabilitation) Act (XLIV of 1954)—Compensation in respect of verified claim payable under—Whether liable to Estate duty.

Held, that any legal rights that came into being in the matter of receiving compensation by displaced persons who had left their properties in Pakistan were created by the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and not by the Displaced Persons (Claims) Act, 1950, which only dealt with the registration and verification of claims. The verification of the claim itself does not clothe the claimant with any interest in or right to any property in the form of compensation and by no stretch of reasoning can the 'verified claim' be considered to be "property" within the meaning of section 2(15) of the Estate Duty Act as it creates no rights whatsoever.

Held, that the amount of compensation payable under the Displaced Persons (Compensation and Rehabilitation) Act, 1954, in respect of the verified claim of the deceased person is not liable to Estate Duty as it does not constitute "property passing on the death" of the deceased,—*vide* section 2(16) of the Estate Duty Act.

Case referred by Central Board of Revenue to High Court under Section 64 (1) of the Estate Duty Act, 1953, for decision of certain points.

S. L. PANDHI, Advocate for the Petitioner.

HARDYAL HARDY, Advocate for the Respondent.

ORDER.

GROVER, J.—This is a reference under section 64(1) of the Estate Duty Act, 1953.

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One, Harchand Singh, who was a displaced person from West Pakistan and was residing at Kotah in the State of Rajasthan died on 20th February, 1954. He had left extensive immovable properties in Pakistan in respect of which a claim had been filed by him which has been duly verified under the Displaced Persons (Claims) Act, 1950, before his death, the amount of the verified claim being Rs. 34,85,030. The Controller of

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Estate Duty determined the principal value of the entire estate of the deceased at Rs. 43,66,249, which included the aforesaid amount of claim. This was done on the return filed by his son and heir Murat Singh who was an accountable person within the meaning of sub-section (1) of section 53 of the Act. Murat Singh preferred an appeal to the Central Board of Revenue under section 63 of the Act against the order of the Controller, his main objection being that the amount of Rs. 34,85,030, representing the "verified claim" could not be included, while computing the principal value of the estate of his deceased father. The Board, however, came to the conclusion *inter alia* that the "verified claim" under the Displaced Persons (Claims) Act, 1950, did constitute "property" passing on death for purposes of Estate Duty, even though the death occurred before the passing of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. The Board, however, considered that the amount to be included in the Estate Duty assessment was not the full amount of the "verified claim", but the amount of "compensation" payable according to the scales of payment laid down by the Displaced Persons (Compensation and Rehabilitation) Rules, 1955. The assessment was ordered to be modified accordingly. Murat Singh, moved the Board for a reference on a question of law to this Court and the Board has referred the following question to us:—

"Whether on the facts and circumstances of the case, the amount of Rs. 2,00,000 being the compensation payable under the Displaced Persons (Compensation and Rehabilitation) Act, 1954, is liable to Estate Duty?"

The Displaced Persons (Claims) Act, 1950, laid down the procedure for registration of claims

of displaced persons with regard to properties left in West Pakistan, which were to be enquired into by officers appointed under the Act, who were to pass such orders as they thought fit in relation to the verification of the claim and the valuation of such claim. There is no provision whatsoever in the aforesaid enactment providing for any legal rights that would attach to such claims or clothing them with any incidence of property. According to the preamble of the Act, it was to provide for the registration and verification of claims of displaced persons in respect of immovable property in Pakistan. It was only when the Displaced Persons (Compensation and Rehabilitation) Act, 1954, was enacted that provisions were made for determination of the amount of compensation and the form and manner of its payment to displaced persons. According to section 4, displaced persons could make applications for payment of compensation in the prescribed form to Settlement Officers within a prescribed period and every application for payment of compensation had to contain certain particulars, one of which was the amount of verified claim. "Verified claim" was defined by section 2(e) of that Act. The determination of the amount of compensation was to be made by the Settlement Commissioner as provided by section 7. Section 8 laid down the form and manner of payment of compensation. That was to be paid out of the compensation pool in accordance with such amount as had been determined under section 7. The compensation pool was to consist of the evacuee property and cash balance lying with the Custodian and other assets, etc., as given in section 14. Rules were then promulgated under the aforesaid Act, [Displaced persons (Compensation and Rehabilitation) Rules, 1955]. These Rules dealt with the detailed procedure and the machinery by which compensation was to be

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determined and the manner in which it was to be paid. There can thus be no manner of doubt that any legal rights that came into being in the matter of receiving compensation by displaced persons, who had left their properties in Pakistan were created by the Act of 1954 and not by the earlier Act of 1950, which only dealt with the registration and verification of claims. In the present case it has, therefore, to be seen whether the verified claim under the Displaced Persons (Claims) Act, 1950, could constitute "property" which passed on the death of the deceased for the purposes of Estate Duty.

Turning to the provisions of the Estate Duty Act, "property" is defined by section 2(15) to include any interest in property, movable or immovable, the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale. It also includes any property converted from one species into another by any method. The explanations to the aforesaid provision are hardly relevant and need not be referred to. Sub-section (16) of section 2 defines "property passing on the death" as including property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and the expression "on the death" includes "at a period ascertainable only by reference to death". Section 3(1) (a) contains a provision that a person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were *sui juris*, enable him to dispose of the property. Estate Duty can be levied according to section 5 upon the principal value ascertained of all property, settled or not settled, including agricultural land situate in the States specified in the

First Schedule to the Act, which passes on the death of such person. Section 6 is to the effect that the property, which the deceased was at the time of his death competent to dispose of shall be deemed to pass on his death. Section 21(1) (a) creates an exception from the charge of duty with regard to foreign property. That provision runs as follows:—

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“There shall not be included in the property passing on the death of the deceased—

(a) immovable property situated outside the territories to which this Act extends;”

The Board in its appellate order dated 28th May, 1957, appeared to consider that the objects clause in the Displaced Persons (Claims) Act, 1950, indicated the Government's intention of either allotting the evacuee property to the displaced persons or to compensate them in any other form as and when the Government might take decision on that question. It could, therefore, be said that the verification of claim itself gave rise to an interest or right to a property, which in due course would have crystallised into compensation. This argument has been pressed before us as well by the learned counsel for the respondent. In the first place, it is not possible to take into consideration the objects clause for the purposes of determining whether a verified claim falls within the definition and meaning of the word “property”. Secondly, even in the objects clause it is merely stated that in regard to owners of urban property from Western Pakistan, it was necessary to obtain accurate information of immovable property, which they had left behind. The following statement further appears:—

“The object of this Bill is to empower Government to receive, register and verify

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claims of displaced persons in respect
of immovable property, which they
have left behind in Western Pakistan
* * * * *

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It is not possible to see from the above and the preamble contained in the Act of 1950 and the substantive provisions, thereof, that the verification of the claim itself would clothe the claimant with any interest or right to any property in the form of compensation. By no stretch of reasoning could the verified claim be considered to be "property" within the meaning of section 2(15) of the Estate Duty Act. In *Amar Singh and others v. Custodian, Evacuee Property Punjab and another* (1), their Lordships had occasion to consider whether the incidents of a *quasi* permanent allotment showed that the sum total thereof constituted even qualified ownership of the land allotted. The various relevant enactments in this connection including the Displaced Persons (Claims) Act of 1950 and the Displaced Persons (Compensation and Rehabilitation) Act of 1954 were referred to and their provisions examined. It was observed that an interest in land owned by another in such a situation could not be fitted into any concept of property itself. It is true that, as observed by Pollock B. in *Smelting Co. of Australia v. Commissioners of Indian Revenue* (2), the term "property" is one of very general meaning and comprehensiveness. It cannot be precisely defined. However, according to Lord Halsbury in *New York Breweries Co. v. The Attorney-General* (3), "property" is not something necessarily connected with physical possession and capable therefore of being treated by manual delivery; but if one comes to analyse its meaning, it is manifest that a great many things, choses in

(1) A.I.R. 1955 S.C. 599

(2) (1896) 2 Q.B. 179 at P. 183

(3) 1899 A.C. 62

action, are in the ordinary sense of the word "property" and capable of being treated not indeed by physical handling, but by the documents of title and investments recognised by the law as transferring the title, the incorporeal right to sue (that is what is strictly comprehended in such phrases), documents, which are capable of being enforced and treated as subjects of property. In Wharton's Law Lexicon (Fourteenth Edition) "property" is stated to be "the highest right a man can have to anything, being used for that right which one has to lands for tenements, goods or chattols, which does not depend on another's courtesy. Property is of three sorts: absolute, qualified, and possessory. Property in reality is acquired by entry, conveyance, descent, or devise; and in personality, by many ways, but most usually by gift, bequest, or bargain and sale. Under the English Law of Property Act, 1925, section 205, 'Property' includes anything in action and any interest in real or personal property". The "verified claim" of a claimant cannot possibly fall within any of the categories of "property"; it created no rights whatsoever.

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The learned counsel for the respondent has based his argument largely on the definition of the expression "property passing on the death"—*vide* section 2(16). It is submitted that on the death of the deceased even the property which was in Pakistan passed on his death and if the claims, which had been registered and verified with regard to the same eventually after an interval of time gave rise to a claim for compensation under the Displaced Persons (Compensation and Rehabilitation) Act, 1954, and payment of such compensation that would be covered by section 2(16). Such an argument cannot be entertained

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nor can it have any force, because at the time of the death of the deceased that could pass was only the verified claim, which has been held not to fall within the definition of the word "property". It is also common ground that no duty could be levied on the agricultural lands and immovable properties of the deceased in Pakistan by virtue of the provisions contained in sections 3 and 21 of the Estate Duty Act, as also the rules framed thereunder.

For the reasons given above, the answer to the question referred to us must be given in the negative. Ordered accordingly. We fix the costs of the assessee at Rs. 300.

Falshaw, J.

FALSHAW, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS.

Before G. D. Khosla, C.J., and Bishan Narain, J.

BHAGWAT DAYAL AND OTHERS.—*Petitioners*

versus

UNION OF INDIA AND OTHERS.—*Respondents.*

Civil Revision No. 371-D of 1959

1960
March 23rd

Land Acquisition Act (I of 1894)—Sections 9, 10 and 11—Proceedings under—By whom to be taken—Appointment of an officer as collector—Whether can be made with retrospective effect—Award made by an officer not a collector on the date of the making of the award but later appointed as Collector with retrospective effect—Whether valid—Principle of ratification—Whether applies in such cases.

Held, that the proceedings under sections 9, 10 and 11 of the Land Acquisition Act, 1894, can be taken only by the