

## REFERENCE UNDER THE COURT-FEES ACT.

Before Mallik J.

1932

Aug. 29.

BHUTNATH TA

v.

BARINDRANATH BHATTACHARYA.\*

*Appeal—Code of Civil Procedure (Act V of 1908), O. XXI, r. 50(3)—“Conditions as to appeal or otherwise as if it were a decree,” meaning of—Court-fees Act (VII of 1870), s. 35.*

The words “conditions as to appeal or otherwise as if it were a decree” in Order XXI, rule 50(3) of the Code of Civil Procedure means “the conditions whether as to appeal or in other respects as if it were a decree” and they include conditions imposed by orders or rules outside the Code of Civil Procedure. This interpretation may in some cases operate as hardship, e.g., in matters relating to the assessment of court-fees in appeals, but the remedy of this hardship is elsewhere, as, under section 35 of the Court-fees Act.

REFERENCE UNDER THE COURT-FEES ACT.

The material facts and arguments appear from the judgment.

*Rupendrakumar Mitra* for the appellant.

*The Assistant Government Pleader, Nasim Ali,*  
for the Government.

MALLIK J. This is a Reference under section 5 of the Court-fees Act made by the taxing officer,—in the present case—the Registrar of the appellate side of the High Court. It has arisen in this way. There was a suit for recovery of money against a firm, named Madhabchandra Ta and Ramratan Chaudhuri. On the 31st March, 1931, the suit ended in a decree for about Rs. 4,700 against the firm. A year later, the plaintiff decree-holder applied under Order XXI, rule 50, sub-clause (2), to have a declaration that Bhutnath Ta and some other persons were partners of the firm. Bhutnath Ta and others appeared and

\*Reference under the Court-fees Act, made by the Registrar, High Court, Appellate Side, dated Aug. 5, 1932.

denied their partnership. But the court, after trying the matter, found that they were partners at material times. Against this order, Bhutnath and others filed an appeal in this Court and there was a dispute between the Stamp Reporter and the advocate filing the appeal as to whether the appeal should be registered as a Miscellaneous Appeal stamped with a fixed fee or as a regular First Appeal and stamped with an *ad valorem* duty.

The decision of this question will, as observed by the Stamp Reporter, depend on a correct interpretation of the words in sub-clause (3) of Order XXI, rule 50 of the Code of Civil Procedure, and for that purpose the taxing officer has referred three questions to this Court. These three questions are:—

(1) What is the exact meaning of the words “conditions as to appeal or otherwise, as if it were a decree” in sub-clause (3) of rule 50 of Order XXI of the Code of Civil Procedure ?

(2) If the words have the more extensive meaning attributed to them by the first interpretation I have placed on them, do they include conditions imposed by orders or rules outside the Code of Civil Procedure ; and

(3) If a more restricted interpretation is to be placed on them, can they be made to refer merely to the appealability or otherwise of the order (if that order had been a decree) and, if so, can such appeals be accepted as Miscellaneous Appeals and stamped with a fixed court-fee only ?

As regards the first question the words “conditions as to appeal or otherwise” cannot, in my opinion, mean anything but “whether as to appeal or in any other respects”. The dictionary meaning of the word “otherwise” is “in other respects,” and there is no reason why the word should not be taken in that ordinary dictionary meaning. This interpretation would not only be grammatical but logical also. Sub-clause (2) of Order XXI, rule 50, lays down that when the liability as a partner is disputed, this liability may be tried and determined in any manner in which any issue in a suit may be tried and determined; and sub-clause (3) lays down that an order passed after such a trial is to have the same force as if it were a decree. If the legislature intended that such an order is to have the force of a decree, there is no reason why, in the absence of anything

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explicit to show to the contrary, it is to be considered as a decree for certain purposes only and not for others. This wider interpretation may in some cases operate as hardship. But the remedy of this hardship lies elsewhere, as, under section 35 of the Court-fees Act, the Local Government has powers to reduce or remit the fees leviable under the Court-fees Act. Mr. Rupendrakumar Mitra, the learned advocate for the appellant, as also Mr. Syed Nasim Ali, the learned Government pleader, conceded that the more extensive meaning should be given to the words "as to appeal or otherwise". The questions referred to me, therefore, are thus answered:—

Question No. 1. The exact meaning of the words "conditions as to appeal or otherwise as if it were a "decree" is "the conditions whether as to appeal or in "other respects as if it were a decree;"

Question No. 2. The answer is in the affirmative; and

Question No. 3. In view of the answers given to questions Nos. 1 and 2, this question does not arise.

I make no order as to costs of this hearing.

A. C. R. C.