

## REFERENCE UNDER THE COURT-FEES ACT.

Before Rankin C. J.

KANTICHANDRA TARAFDAR

v.

RADHARAMAN SARKAR\*.

1929

April 26.

*Court-fee—Appeal from final decree in an account suit, principle of assessment of—Court-fees Act (VII of 1870), s. 7, sub-s. IV(f); s. 11; Sch. II, Art. 17.*

Article 17 of Schedule II of Court-fees Act is not intended to apply to a case where a person, with a definite decree for a particular sum of money against him, seeks to set it aside. Therefore, in a suit for account, a defendant, appealing against the final decree, must value his appeal according to that decree, though the claim in the suit and the preliminary decree might have been for a lower sum.

The proper amount of court-fees payable in such a case is governed by section 7, sub-section IV, clause (f) of the Court-fees Act.

The question of execution of the decree in this connection is an extraneous and collateral matter altogether. It is the decree which establishes liability. The mere fact that the plaintiff will have to pay a further fee to enforce the liability does not affect the question of the court-fees to be paid by the defendant for his appeal.

Where the defendant, in such a case, has appealed against the preliminary decree, he will get credit for what he has already paid in connection with it for court-fees.

*Kanchar Mandar v. Kamala Prosad Chowdhury* (1) and *Ram Mander v. Maharani Nawlakhbati* (2) referred to.

REFERENCE under the Court-fees Act.

This was a Reference by the Registrar, Appellate Side, High Court, under the Court-fees Act (VII of 1870), section 7, sub-section IV, clause (f) in Appeal from Original Decree, No. 82 of 1929.

The plaintiff brought a suit, for declaration of title and recovery of possession of certain immoveable property and for accounts against the defendants as executors of plaintiff's grandmother, before the Subordinate Judge of Burdwan. The entire suit was valued at about Rs. 9,000, the

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(1) (1912) 16 C. L. J. 564.

(2) (1924) I. L. R. 3 Pat. 815.

1929

KANTICHANDRA  
TARAFDAR  
v.  
RADHARAMAN  
SARKAR.

claim for accounts being valued at Rs. 1,000. The plaintiff got a preliminary decree for accounts. The defendant filed an appeal against that preliminary decree in the High Court, which was valued originally at Rs. 1,300, on which full *ad valorem* court-fee was paid. During the pendency of the appeal against the preliminary decree, a final decree was passed, for a sum of Rs. 6,418-2-9, so far as the claim for accounts was concerned.

Against this final decree, an appeal was filed by the defendants. The memorandum of this appeal was stamped with a court-fee of only Rs. 2.

As there was some doubt in the matter, the Stamp Reporter submitted the case to the Registrar, High Court, Appellate Side, who referred the case to the Chief Justice for orders.

*Mr. Debendranath Bagchi, Jr.* (with him *Mr. Mohinimohan Bhattacharya*), for petitioner. No additional court-fee was leviable, as the Subordinate Judge did not ask the plaintiff in the original suit to pay any further court-fee. The reason why the court below did not insist upon payment of a further court-fee, as a condition precedent, was that, if the appeal against the preliminary decree succeeded, the additional court-fee paid by the plaintiff in respect of the final decree would be paid in vain, since the final decree would be brought to the ground, if the preliminary decree were set aside. Further, the final decree, being passed without requiring the plaintiff to pay additional court-fee, is, in its present state, a decree incapable of execution, according to section 11 of the Court-fees Act, and as such the appellants should not be called upon to pay any court-fee in addition to that paid for the preliminary decree. The appeal may be considered to come under Article 17, *vi*, Schedule II, of the Court-fees Act, as being incapable of valuation.

*The Senior Government Pleader, Mr. Surendranath Guha* (with him *Mr. Amulyacharan Sen*), for the

Crown. As the final decree was passed for Rs. 6,418-2-9, the appellants must value their appeal against it at this figure and pay court-fee on the difference between the amounts of the final and preliminary decrees. Article 17, *vi*, Schedule II, Court-fees Act, has no application.

*Mr. Bagchi*, in reply.

RANKIN C. J. In this case, the plaintiff brought a suit for accounts against two defendants, as executors of the plaintiff's grandmother. He valued his suit so far as regards the claim for accounts at Rs. 1,000 and this he appears to have done quite reasonably and correctly under sub-clause (*f*), sub-section IV of section 7 of the Court-fees Act.

A preliminary decree for accounts was made against the two defendants and from this they appealed to the High Court, paying full court-fee, so far as regards the claim for accounts, *viz.*, on Rs. 1,000. They paid apparently a court-fee on Rs. 1,300 altogether. A stay of execution was asked for from this Court, but was refused and the suit in the court below proceeded; after an enquiry and report by a Commissioner, a final decree was made in the plaintiff's favour for Rs. 6,418, as the amount due from the defendants, upon the taking of the accounts. The judgment did not require the plaintiff, as a condition precedent, to deposit an additional court-fee within a given time, nor did it order that, on his failure to do so, the suit should be dismissed. It appears that there is no provision in the statute law requiring the court to make an order in that form. There is, however, a provision by section 11 of the Court-fees Act, which is as follows:—"If the profits or amount decreed are or is in excess of the profits claimed or the amount at which the plaintiff valued the relief sought, the decree shall not be executed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amounts so decreed shall have been paid to the proper officer."

1929

KANTICHANDRA  
TARAFDAR  
v.  
RADHARAMAN  
SARKAR.

1929

KANTICHANDRA  
TARAFDAR  
v.  
RADHARAMAN  
SARKAR.  
RANKIN C. J.

Thereupon, the defendants bring in this Court an appeal from the final decree, and the question before me is the question of the proper amount of the court-fee that they must pay upon their memorandum of appeal. It appears to me to be *prima facie* clear that the amount payable upon this memorandum of appeal is governed by the same words as governed the plaintiff's liability to pay court-fee, when he brought his suit. It is governed by clause (f), sub-section IV of section 7 of the Court-fees Act: "Suits for "accounts—according to the amount at which the "relief sought is valued in the memorandum of "appeal." The Registrar, I think, viewed this matter exactly in the proper way. The question is, the liability being according to the amount at which the relief sought is valued in the memorandum of appeal, is it proper in this appeal to say that under Article 17 of the second schedule it is impossible to value the relief, or is it open to the appellant to say that it is possible to value the relief, but that he can justify a valuation that is less than the sum of Rs. 6,418, by reason of the fact that the decree of the lower appellate court, as it stands, is not at this moment a decree which can be executed without payment of further court-fee? In my judgment, it is reasonably clear that Article 17 of the second schedule cannot be applied in these circumstances at all. It was never intended to apply to a case, where a person, with a definite decree for a particular sum of money against him, seeks to set it aside. The question whether or not a decree is, at this moment, capable of being executed, without payment of a certain amount of money by the plaintiff as a court-fee, is not, in my judgment, a question which affects the method in which the relief in a memorandum of appeal of this character can be valued. It is in no way for this Court to estimate or value the chances of the plaintiff paying the necessary court-fee in order to get execution. The appeal is an appeal from a decree. The execution of the decree seems to me to be an extraneous and collateral matter altogether. It is the decree which establishes the

liability. The mere fact that the plaintiff would have to pay a fee to enforce the liability is not a matter which affects the fact that the defendants here are endeavouring to get rid of a liability of Rs. 6,418. One may consider this matter from the strict point of view of theory. It might quite well be that the plaintiff would never need to apply to enforce his claim by execution. He might have a cross claim which he might set off. There might be other ways in which he might be able to utilize his decree. It cannot be said that there is anything defective in the decree itself and, as the plaintiff is at the present moment not concerned with any question of execution, it does not seem necessary that this question of execution should be taken to affect the case at all.

It has been contended by Mr. Bagchi that the reason why the Judge in the court below did not insist upon payment of a further court-fee, as a condition precedent, was that, if the appeal against the preliminary decree succeeded, the additional court-fee paid by the plaintiff in respect of the final decree would be paid in vain, since the final decree would be brought to the ground if the preliminary decree were set aside. I do not know whether that was the motive of the learned Judge or not, but this question cannot depend upon the motive of the learned Judge in the court below. It is said to be inequitable that the defendants should have to pay a court-fee on Rs. 6,418, when, so far, the plaintiff has never had to pay a court-fee upon that amount. Equity and equality are sometimes two different things. What the plaintiff had to pay is not, to my mind, relevant on the question of what the defendants should pay. Defendants have thought fit to appeal against the decree. They have sufficient respect or fear for the decree to make it seem worthwhile to bring the appeal against the decree itself. It does seem to me that, even if it turns out that the plaintiff has been treated in a lenient way consistent with the Court-fees Act, that is not any reason why in a matter of this kind I should treat the defendants otherwise than in

1929

KANTICHANDRA  
TARAFDAR.

v.

RADHARAMAN  
SARKAR.

RANKIN C. J.

1929

KANTICHANDRA  
TARAFDAR  
v.  
RADHARAMAN  
SARKAR.  
RANKIN C. J.

accordance with the meaning of the statute. It is very probable that the plaintiff will pay additional court-fee and, in that case, the question of equity will vanish altogether. I cannot think that the expression used in the course of discussing another matter in the case of *Kanchan Mandar v. Kamala Prosad Chowdhury* (1), ought to be regarded as, in any way, an authority on the point. It is quite true that, in putting a hypothetical case, the learned Judges said "if mesne profits had been decreed for a higher sum than what is claimed in the plaint and if the plaintiff had obtained a decree for such sum upon payment of additional court-fees, the defendants might have been called upon to pay the difference." The learned Judges there put the case, which was the usual case, but their remarks cannot be treated as impliedly deciding a case, in which the plaintiff got a decree without immediate payment of additional court-fees.

I have been carefully through the note made by the Registrar in this matter and agree in the view which he takes. It is quite clear, upon the authority of the case I have already mentioned, and also in the case of *Ram Mander v. Maharani Nawlakhbati* (2), that, for the purpose of his appeal, the defendants will get credit for what they have already paid in connection with the appeal from the preliminary decree, the principle being that the defendants are in the end resisting a certain claim and on that they have come to court and they do not have to pay the court-fees twice over. I am satisfied that the figure, at which the Registrar has assessed the liability in his Reference, is the correct figure and I confirm it.

S. R.

(1) (1912) 16 C. L. J. 564.

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