

QUEEN-  
EMPRESS  
v.  
PUNOR KORU.

“Sub-Inspector’s sword was damaged, his cap lost, and his coat torn, but no wounds or bruises are alleged. As soon as the Adhikari came, the search was made without opposition. It, therefore, seems to me that even if the appellants did all that the prosecution alleges, they committed no offence, and must be acquitted. I reverse the finding and sentence of the Lower Court and cancel the appellant’s bail bonds.”

The *Acting Public Prosecutor* (Mr. *Subramaniam*) for the Crown. The prisoners were not represented.

JUDGMENT.—The District Magistrate appears to have had no ground for his finding that the Sub-Inspector acted irregularly in making the search. But, assuming the Magistrate’s finding had been correct, the irregularity would have afforded no justification for the defendants’ acts.

When the Magistrate states that the defendants were ‘justified’ in their resistance, we presume he means by the right of private defence (for we can conceive of no other justification), but the Magistrate has overlooked the provisions of the first and second clauses of section 99 of the Penal Code, which do not allow of the exercise of that right when an act such as this is done by a public servant or under the direction of a public servant which the Sub-Inspector was.

We must therefore reverse the District Magistrate’s order of acquittal and direct that the appeal be restored to the file and heard and disposed of upon its merits. Ordered accordingly.

[Reporter’s note : See *Reg v. Vyanhatrav*, 7 B.H.C.R., Crown cases 50.]

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## APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and  
Mr. Justice Shephard.*

*In re* MAKKI, APPELLANT IN S.R. No. 11703.

*In re* RAMAN, APPELLANT IN S.R. No. 13187.\*

*Court Fees Act—Act VII of 1870, sched. I—Appeal—Stamp leviable for costs.*

When apart from, and independently of, any other reliefs which an appellant seeks in an appeal from a decree, he seeks distinct relief on the ground that by

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\* Referred Case No. 1 of 1893.

the decree under appeal the costs of the parties in the proceedings which terminated with the decree have not been properly assessed or apportioned, the value of such distinct relief should be reckoned as part of the subject-matter in dispute for the purposes of the first schedule of the Court Fees Act.

*In re*  
MAKKI.

CASE referred for the decision of the High Court under section 5 of Act VII of 1870 by H. W. Foster, Registrar of the High Court, Appellate Side, Madras.

The case was stated as follows :—

“The question which has given rise to this reference is whether, under certain circumstances, costs awarded by the decree of a Court should not be regarded as part of the ‘value of the subject-matter in dispute’ for the purpose of calculating the fees payable under schedule I of the Court Fees Act on a memorandum of appeal against the decree.

There are two second appeals now pending admission in which the point has been directly raised.

The first of these arises out of original suit No. 24 of 1889 on the file of the Subordinate Court of Calicut. In this case the plaintiff sued fifteen defendants to recover a paramba with mesne profits and damages amounting to Rs. 363, and he tendered Rs. 30 as compensation for improvements. The Subordinate Judge gave a decree against first defendant (who alone contested the suit) for surrender and for payment of Rs. 136 as damages and mesne profits, but fixed the compensation for improvements at Rs. 140. The decree also directed the first defendant to pay the whole of the plaintiff’s costs.

The first defendant appealed to the District Court (App. 1017 of 1890), and took express objection to the order as to costs. The District Judge of South Malabar confirmed the decree except as to costs regarding which he ordered that each party should bear his own.

Against this decree the plaintiff has presented a second appeal in which, amongst other grounds, he contends that “the District Judge having accepted the findings of the Subordinate Judge, that the first defendant was guilty of committing waste and of forging receipts should not have interfered with the Subordinate Judge’s order as to costs,” and that “the plaintiff is under the circumstances at least entitled to proportionate costs.”

The second case arises out of appeal No. 338 of 1891 on the file of the Subordinate Court of North Malabar. In this appeal the

*In re*  
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Subordinate Judge, reversing the decree of the District Munsiff, who dismissed the suit with costs (original suit No. 72 of 1891 on the file of District Munsiff of Cannanore), gave a decree for plaintiff as prayed for with costs throughout payable by first defendant. The first defendant has now preferred a second appeal, of which one of the grounds is that "under the peculiar circumstances of this case the Lower Appellate Court ought not to have "decreed the payment of costs of this suit."

As a rule, costs decreed by a Lower Court are not computed as part of the subject-matter in dispute for the purpose of assessing Court fees on an appeal, but when an appellant expressly questions the propriety of the order as to costs, when he treats the costs awarded as a matter separate and independent from the other reliefs given by the decree, and contends that even if the rest of the decree is upheld, the order as to costs should be modified in his favour, it is the practice in this office to add the amount of the costs in respect of which there is a contention to the value of the other matter in respect of which the appeal is made for the purpose of arriving at the total value of the "subject-matter in dispute." Each of the above two cases being of this nature the appellant has been called upon to pay Court fee on the amount of costs disputed.

Each urges that he is not liable to this payment on the general ground that costs form no part of the subject-matter in dispute. The authorities relied on for this contention are *Doorga Doss Chowdry v. Ramanauth Chowdry*(1), *Nilmadhuh Doss v. Bishumber Doss*(2) and High Court Proceedings, dated 10th November 1875, No. 2739.

The first case cited *Doorga Doss Chowdry v. Ramanauth Chowdry*(1) was an application to the Privy Council to admit an appeal without a certificate from the High Court. The substantive amount of the decree was below the minimum limit at which an appeal was allowed by the rules, but for the appellant it was argued that he was entitled to add the costs awarded against him by the decree, such addition would have brought the figure up to the minimum limit, but the Privy Council held that "the costs of a suit are no part of the subject-matter in dispute, and cannot be used for the purpose" for which the appellant sought to use them.

In the second case *Nilmadhuh Doss v. Bishumber Doss*(2) a similar opinion seems to be indicated, though the necessity for

(1) 8 M.I.A., 262.

(2) 13 M.I.A., 85, s.c., 3 B.L.R., 27.

deciding the point did not arise. The third authority is a Proceeding of the High Court passed on a question referred by the Acting District Judge of South Canara as to whether "when the objection taken by the respondent under section 348 (561) of the Code of Civil Procedure has reference only to so much of the Lower Court's decree as disallows costs, any additional fee is payable under section 16 of the Court Fees Act." The Court, while pointing out that its answer was not authoritative, stated in reply the opinion that no additional fee was authorized in the case referred, and quoted the dictum in the Privy Council case above cited, that "costs are no part of the subject-matter in dispute."

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This Proceeding seems exactly in point supposing the expression "subject-matter of the suit" used in section 16 of the Court Fees Act to be equivalent to "subject-matter in dispute used in schedule I of the Act. The plaintiff obtained a decree as prayed for, but his costs were disallowed and he appealed against that part of the decree disallowing his costs by putting in a memorandum of objections.

My reasons for not accepting the decision as final, however, are first, that the Proceeding disclaims any authoritative force, and, secondly, that the practice of the Registrar's office has never been brought into conformity with the rule laid down. The Privy Council ruling cited in the Proceeding does not appear to be on all fours with the cases referred. In the case before the Privy Council it would appear that costs followed the result in the High Court, and consequently an appeal against the amount absolutely allowed by the decree involved an appeal against the order as to costs. In such cases, it is not the practice in the High Court to reckon in costs in computing the value of the subject-matter. If costs are in no cases to be regarded as part of the subject-matter in dispute, it would seem to follow that costs ought not to be permitted to be made a separate and independent subject of appeal. But if a separate ground of appeal on the subject of costs is permitted, then the apportionment of costs might be the only question raised in appeal, and then on the construction contended for an appeal might be filed free from Court fees.

The point is of importance since it is of frequent occurrence, and as there is some doubt in the matter, I make this reference.

The question for decision is as follows:—

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MAKKI.

“When apart from, and independently of, any other reliefs which an appellant seeks in an appeal from a decree, he seeks distinct relief on the ground that by the decree under appeal the costs of the parties in the proceedings which terminated with the decree have not been properly assessed or apportioned, should the value of such distinct relief be reckoned as part of ‘the subject-matter in dispute’ for the purposes of the first schedule of the Court Fees Act, or should the said value be excluded from computation?”

*Ryru Nambiar* for appellant in S.R. No. 13187.

Mr. *Wedderburn* for the Government Pleader *contra*.

DECISION.—The appellant has made the costs the subject-matter of dispute, and therefore a Court fee stamp is leviable.

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## APPELLATE CRIMINAL.

*Before Mr. Justice Davies and Mr. Justice Boddam.*

QUEEN EMPRESS

v.

VASUDEVAIYYA.

*Criminal Procedure Code, Act N of 1882, s. 419—‘Presented.’*

The Criminal Procedure Code, s. 419, requires that a criminal appeal shall be delivered to the proper officer of the Court either by the appellant or his pleader. Where a petition of appeal was not presented to the Court, but was deposited in a petition box kept for the convenience of parties within the Court precincts and intended for the deposit of papers for the Court :

*Held*, that it had not been presented and was rightly returned for legal presentation.

CASE reported for the orders of the High Court under section 438 of the Code of Criminal Procedure by L. C. Miller, Acting District Magistrate of South Canara.

The case was stated as follows :—

“I have the honour to forward the petition of pleader M.R. Ry. Pungal Subba Row on behalf of Vasudavayya, accused in calendar case No. 510 of 1895, on the file of the Stationary Second-class Magistrate of Udipi, against the order of the Acting Head Assistant Magistrate, rejecting the appeal against the finding and sentence of the Sub-Magistrate, for the order of the High Court.