

## APPELLATE CIVIL.

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

KASTURI CHETTI (CLAIMANT), APPELLANT,

v.

DEPUTY COLLECTOR, BELLARY (REFERRING OFFICER),  
RESPONDENT.\*

1898.  
February  
14, 15, 24.

*Court Fees Act—Act VII of 1870, ss. 5, 8, 28, sched. II, art. 17 (iv)—  
Appeal against award under Land Acquisition Act.*

An appeal against an award made by the District Judge under Land Acquisition Act I of 1894 was filed in the High Court, the appeal memorandum bearing a Court-fee stamp of Rs. 10 only and was admitted by the Registrar, no question having been raised as to the sufficiency of the stamp. On the appeal having been posted for hearing, it was objected on the part of the respondent that the stamp paid was insufficient :

*Held*, that the appeal memorandum should have borne an *ad valorem* stamp under Court Fees Act, section 8, and that there having been no decision by the taxing officer under section 5, it was open to the respondent to raise the objection on appeal at the hearing.

APPEAL against an award of T. M. Horsfall, Acting District Judge of Bellary, under Land Acquisition Act I of 1894 in claim No. 3 of 1896.

The claimant was the owner of certain land proposed to be acquired for sanitary purposes for the Bellary Municipality under the Land Acquisition Act. The Head-Quarters Deputy Collector awarded Rs. 370-4-9 under section 11. The land-owner being dissatisfied with this award, preferred a claim to the District Court for a sum of Rs. 4,600. The District Judge awarded Rs. 463.

The land-owner now preferred this appeal.

*Venkataramayya Chetti* for appellant.

The Government Pleader (Mr. E. B. Powell) for respondent.

JUDGMENT.—The Government Pleader draws our attention to the fact that this appeal should have been on a stamp of Rs. 235 under section 8 of the Court Fees Act, instead of being as it is on a stamp of Rs. 10 under article 17 (iv) of schedule II of the Court Fees Act. There can be no doubt but that the objection is well founded. Article 17 (iv) of schedule II of the Court Fees Act

\* Appeal No. 138 of 1897.

KASTURI-  
GHETTI  
v.  
DEPUTY  
COLLECTOR,  
BELLARY.

prescribes generally the proper stamp for a suit to set aside an award, but section 8 of the same Act is a special provision applicable to appeals against all orders including awards, relating to compensation under the Land Acquisition Act, and the special provision overrides and governs the general provision in accordance with the ordinary and well-established rules of construction.

The Vakil for the appellant, however, contends that the appeal having been admitted by the Registrar on a stamp of Rs. 10, no objection as to the amount of the stamp can now be taken, and he relies on the authority of the decision in *Ranga Pai v. Baba*(1).

In that case, however, the court assumed that there was a "decision" by the taxing officer under section 5 of the Court Fees Act, and the whole of the reasoning in that case proceeds on that assumption. In the present case, however, there was no "decision" by the taxing officer within the meaning of section 5 of the Court Fees Act. That section requires that there should be, in the first instance, a difference of opinion between the officer whose duty it is to see that the proper fee is paid and any suitor or attorney as to the fee payable, and, secondly, that there should be a reference to the taxing officer, who should then give a "decision" on the question raised. In the present case there was no such difference or reference, nor was there any decision by the taxing officer except such as might be implied from the admission of the appeal. That, in our opinion, is not such a "decision" as the section requires. We think that, unless the question was raised before the taxing officer and unless he brought his mind to bear on the question and decided it, section 5 of the Court Fees Act had no application. Otherwise there would be no remedy for the most obvious error, or even for a deliberate trick to defraud the stamp revenue, unless detected by the routine establishment in the first instance, and before the admission of the appeal or the reception of the paper, as the case might be:—Section 23 of the Court Fees Act clearly contemplates the possibility of such mistakes and provides a remedy even in the High Court. We are, therefore, of opinion that the case relied on is not on all fours with the present case, and that section 5 of the Court Fees Act does not prevent our now taking notice of the deficiency in the stamp duty.

---

(1) I.L.R., 20 Mad., 398.

Under section 582-A, Civil Procedure Code, we allow the appellant to pay the deficient stamp duty within one week from this date; failing which, the appeal will stand dismissed with costs.

This appeal coming on for final hearing and the appellant's Vakil not having complied with the above order, the Court delivered the following judgment:—

JUDGMENT.—The deficient stamp duty not having been paid, the appeal is dismissed with costs. The costs will be calculated on the appellant's valuation of the appeal.

KASTURI  
CHETTI  
v.  
DEPUTY  
COLLECTOR,  
BELLARY.

---

## APPELLATE CIVIL.

*Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.*

KOTI PUJARI (PLAINTIFF), PETITIONER,

v.

MANJAYA AND OTHERS (DEFENDANTS NOS. 1 AND 3 TO 17),  
RESPONDENTS.\*

1897.  
December 15.

*Suit's valuation—Pecuniary limits of jurisdiction—Suit filed in superior Court.*

In a suit on a mortgage, in which the amount claimed was in excess of the pecuniary limits of the jurisdiction of a District Munsif, and which was filed in the Court of a Subordinate Judge, it appeared that there had been an adjudication by a District Munsif in a previous suit affecting the rights of the parties now in issue, and that the present claim was largely composed of interest. The Subordinate Judge having framed issues relating to the claim for interest and having tried them as preliminary issues, decided that the suit was within the pecuniary limits of the jurisdiction of a District Munsif, and that the claim had been unwarrantably exaggerated with a view to filing the suit in a superior Court, and so avoiding the plea of *res judicata*, and he thereupon returned the plaint to be presented in the proper Court:

*Held*, that the procedure adopted was wrong and that the whole suit should have been tried.

PETITION under Civil Procedure Code, section 622, praying the High Court to revise the proceedings of H. G. Joseph, District Judge of South Canara, in Civil Miscellaneous Appeal No. 30 of 1896, dismissing an appeal against order of U. Achutan Nayar, Acting Subordinate Judge of South Canara, in Original Suit No. 3 of 1896.

---

\* Civil Revision Petition No. 165 of 1897.