

## APPELLATE CIVIL.

1885

*Before Sir Richard Garth, Knight, Chief Justice.*

December 6. MOHAMED MASIK (DEFENDANT) *v.* MALKAI MUKHADRAI UZWA  
BADSHAH MEHAL SAHEBA (PLAINTIFF).\*

*Court Fees Act (VII of 1870), s. 7 (cl. o.)—Suit to set aside a trust deed and to recover trust money—Appeal by trustee—Duty payable on memorandum of appeal.*

A brought a suit against B a trustee and others to set aside a trust deed and to recover Rs. 2,50,000, the amount of the trust money, and valued his suit at Rs. 2,50,000. A obtained a decree. B. appealed and sought to affix to his memorandum of appeal a ten-rupee stamp, under Art. 17 (cl. 6) of Sch. II of Act VII of 1870.

*Held*, that the duty payable on the memorandum of appeal was the same as that paid on the plaint in the suit.

THE suit to which this appeal relates was instituted to set aside a deed of endowment, whereby the plaintiff made over certain Government promissory notes of the value of Rs. 2,50,000 to the first defendant, and appointed him and his co-defendants in the suit, trustees for her (the plaintiff) during her life-time, and after her death for the management of certain charities, and also to recover the promissory notes in question.

The plaint was accordingly valued at the above amount, *viz.*, Rs. 2,50,000, and an ad valorem Court-fee of Rs. 2,175 was paid thereon.

The suit having been decreed the defendant No. 1 sought to prefer an appeal against the decree paying a Court-fee of Rs. 10 only under Art. 6 of No. 17 of Sch. II of the Court-fees Act (VII) of 1870, as for an appeal "where it is not possible to estimate at a money value the subject-matter in dispute."

The Deputy Registrar was of opinion that, as the suit was instituted for the purpose of having a deed of endowment declared invalid, and for the recovery of the Government promissory notes, as above stated, it evidently fell under cl. (c) of s. 7 of the Court-fees Act; and that the appellant should therefore value the appeal

\* Reference under s. 5 of Act VII of 1870.

in the same way as the suit was valued, *viz.*, with reference to the subject-matter (see *Joy Narain Giree v. Greesch Chunder Mytee* (1.)

The matter then came before the Taxing Officer for orders, and he gave the following opinion :—

“The object sought to be attained in bringing the original suit was the actual recovery of Government promissory notes to the value of Rs. 2,50,000, which had been endorsed to the defendant under the terms of the deed. The plaintiff's interest in the suit amounted therefore to 2½ lakhs of rupees, and she correctly affixed an *ad valorem* stamp on her plaint in the lower Court.

“In appealing against the judgment of the lower Court, the defendant seeks to change the nature of the suit and to determine its value, not according to the property in dispute, but according to his interest (or alleged interest) in it.

“The first question, therefore, for decision is, whether the appellant can change the nature of the suit in appeal for the purposes of determining the Court-fees payable. I know of no instance where this course has been allowed. I have never known it to be seriously contended. It is certainly a point of general importance and as such must be referred for the decision of the Chief Justice under s. 5 of the Court-fees Act VII of 1870.

“The next point to be determined is the extent of the defendant's interest in the suit. His vakeel urges that he has no present interest, for he gets nothing until the plaintiff dies, and then merely a stipend of Rs. 50 a month. This may be the case if the defendant is to be regarded as an individual and not as a trustee. In the latter capacity, it seems to me that his interest extends to the retention of the principal entrusted to his care, and it is as a trustee, and not as an individual member of society, that he appeals. If this be the correct view, then, even granting that he may change the nature of the suit in appeal, his interest in it is equal to that of the plaintiff, and is represented by a money value of 2½ lakhs.

“In connection with this point it should be observed that the Government promissory notes for 2½ lakhs are endorsed to defen-

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dant *by name*, and that he is entitled, therefore, to draw the whole interest thereon.

“I think that the first question should be answered in the negative. The Court-fees Act does not distinguish between a “plaint” and a “memorandum of appeal” when the latter is from a decree. If, therefore, the fee was correct in the lower Court—and this is not denied—then the same fee is leviable in the Appellate Court.

“As to the second point, I am of opinion that the interest of the appellant is equivalent to that of the plaintiff so far as regards the subject-matter of this suit; and that such interest amounts to a money value of 2½ lakhs, and is possessed by defendant in his capacity of trustee.”

The Taxing Officer, therefore, referred the two questions above-mentioned to the Chief Justice under s. 5 of Act VII of 1870.

Baboo *Pran Nath Palit* for the appellant.

No one appeared on the other side.

GARTH, C.J.—I have no doubt whatever that in this case the nature of the appeal is the same as the value of the suit, namely, Rs. 2,50,000.

The question is not what is the defendant's personal interest in the subject-matter of the suit. He may have no personal interest at all; and yet the subject-matter of the appeal may be as valuable as the subject-matter of the suit. There is nothing, as far as I can see, in the defendant's objection.