APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao and
Mr. Justice Abdur Rahman.

KALIAPPA GOUNDAN (PLAINTIFF), APPELLANT,

v.

KANDASWAMI GOUNDAN (DEFENDANT), RESPONDENT.*

1938, January 18.

Court Fees Act (VII of 1870), Sch. I, art. 1—Subject-matter in dispute in second appeal within meaning of—Appeal by plaintiff to lower appellate Court—Additional court-fee demanded by that Court on memorandum of—Dismissal of appeal on non-payment of—Second appeal by plaintiff against, contending that court-fee paid by him in Court below was the proper fee—Court-fee payable in—Sch. II, art. 17-B, of Court Fees Act—Applicability of.

The plaintiff, who was the appellant in the lower appellate Court, paid a court-fee of Rs. 100 on his memorandum of appeal. The lower appellate Court held that the court-fee payable was Rs. 412-7-0. The plaintiff failed to pay the deficit court-fee and the appeal was dismissed. From the dismissal he filed a second appeal in the High Court. He valued the same at Rs. 312-7-0, being the difference between the amount of court-fee demanded by the lower appellate Court and the amount of court-fee paid by him, and paid court-fee on that valuation. In the second appeal it was held that the proper fee payable thereon was that demanded by the lower appellate Court and an order was made directing the plaintiff to make good the deficiency. The plaintiff did not comply with that order and the second appeal was dismissed. In a Letters Patent Appeal preferred by the plaintiff,

held that article 1, Schedule I, of the Court Fees Act applied to the case and that as the dispute in the lower appellate Court had reference only to the court-fee payable, the difference between the court-fee paid by the plaintiff in the lower appellate Court and the court-fee demanded by that Court and not the subject-matter of the suit itself was the

* Letters Patent Appeal No. 22 of 1936.

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subject-matter in dispute in the second appeal within the meaning of that article and that the proper fee payable on the second appeal was only the fee payable on the amount representing that difference.

Serial Register No. 1923 of 1923 relied upon.

APPEAL under Clause 15 of the Letters Patent against the judgment of WADSWORTH J. dated 9th August 1935 and made in Second Appeal No. 209 of 1934, preferred against the decree of the District Court of Coimbatore in Court Fees Register No. 2169 of 1933 (Memorandum of appeal sought to be preferred against the decree in Original Suit No. 149 of 1931, Sub-Court, Coimbatore).

T. R. Srinivasa Ayyar for appellant.

M. Krishna Bharati for *S. Muthia Mudaliar* for respondent.

N. Srinivasa Ayyangar for *Government Pleader* (*K. S. Krishnaswami Ayyangar*) for Government.

Cur. adv. vult.

JUDGMENT.

VENKATASUBBA RAO J.

VENKATASUBBA RAO J.—In the lower appellate Court the plaintiff, who was the appellant, paid as court-fee on his memorandum of appeal Rs. 100. The District Judge held that the correct fee payable was Rs. 412-7-0. The appellant failed to pay the deficit court-fee and the appeal was dismissed. From the dismissal he filed a second appeal in this Court, which he valued at Rs. 312-7-0, being the difference between Rs. 412-7-0 and Rs. 100. On that valuation he paid a court-fee of Rs. 35-15-0. MADHAVAN NAIR J., holding that on the second appeal the proper fee payable was Rs. 412-7-0, directed the

appellant to bring into Court the balance of Rs. 376-8-0. This order was not complied with and the second appeal was dismissed.

The question we have to decide is, what was the subject-matter in dispute in the second appeal? A possible argument that the subject-matter is incapable of valuation and that therefore Schedule II, article 17-B, applies, may be at once dismissed. Mr. Srinivasa Ayyangar who appears for the Government Pleader does not put forward any such contention; nor has it found favour in any case dealing with this subject.

The provision then that is applicable is article 1, Schedule I, of the Court Fees Act. In such a case as this, what is the subject-matter in dispute within the meaning of that article? This point has been fully considered in a valuable judgment of SCHWABE C.J., which unfortunately has not been reported and to which the learned Judge's attention was not called.

"I think",

observes SCHWABE C.J.,

"that the subject-matter in dispute, meaning the subject-matter in dispute in appeal, has the simple meaning applicable to this case, namely, the amount of stamp in dispute between the parties." (Serial Register No. 1923 of 1923).

This view receives support from a case decided so far back as in 1882; *Durga Prasad* v. *Raghubar Dial*(1). The Court Fees Act is a taxing statute and it is settled law that the intention to impose a charge upon the subject must be shown by clear and unequivocal language (Mr. Viswanatha Ayyar's Court Fees Act, pages 4 to 9). If two constructions of a fiscal enactment are equally possible

(1) (1882) 2 All. W.N. 244.

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and reasonable, the construction more favourable to the subject must be enforced ; see *Ramaswami Chettiar* v. *Commissioner of Income-tax*(1). What then is the subject-matter of the appeal? According to SCHWABE C.J., the dispute in the lower Court had reference only to the court-fee payable ; the difference between the court-fee paid and the court-fee demanded is the matter in dispute in the second appeal. That seems to be the natural and plain meaning of the words and it would be wrong to put a forced construction on the language. The alternative contention is that the subject-matter in dispute is the subject-matter of the suit itself. In the differing judgments in *Ganpati* v. *Venkatesh*(2) the two rival views have been fully expounded. In my opinion the view taken by NIYOGI A.J.C. is, with all respect, the sounder one. As he points out, the rejection of a plaint means only a refusal to entertain the suit and can in no case imply a conclusive determination of the rights of the parties. Order VII, rule 13, Civil Procedure Code, which provides that the rejection of a plaint, *inter alia*, for failure to pay the deficit court-fee, shall not preclude the plaintiff from presenting a fresh plaint, lends support to that view. As pointed out in his judgment, granting that the rejection amounts to a decree within the meaning of the Code, it is difficult to see how it affects the question of court-fee. The question that still has to be determined is, what is the subject-matter in dispute? As already said, I see no reason why these words should not receive their natural meaning.

(1) (1928) I.L.R. 52 Mad. 194 (F.B.). (2) A.I.R. 1935 Nag. 83 (F.B.).

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The Letters Patent Appeal is allowed with the plaintiff's costs to be paid by the defendant. The second appeal is restored and must be heard. We make an order expediting its hearing. This being a pauper appeal no question of refund of court-fee on the memorandum of Letters Patent Appeal arises.

ABDUR RAHMAN J.

ABDUR RAHMAN J.—I concur. The decision of this appeal depends, as pointed out by my learned brother, on the true construction of the words "subject-matter of appeal" employed in Schedule I, article 1, of the Court Fees Act. It is a matter of common experience that the subject-matter of every appeal does not necessarily coincide with the subject-matter of every suit in regard to which the appeal has been filed. In order to ascertain the correct valuation of each appeal for purposes of court-fee, one will have to ascertain the subject-matter of that appeal. What then is the subject-matter of this appeal? A mere cursory glance at the grounds of appeal filed on behalf of the appellant would show that he had come up to the High Court with the object of testing the correctness of the order passed by the District Judge, who had ordered him to pay an additional court-fee of Rs. 312-7-0 and the failure to pay which had resulted in the rejection of his appeal. He had therefore valued his appeal to the High Court at that figure. The learned Judge of the High Court refused to entertain the appeal unless the appellant made up the deficiency between the value placed by him and that ordered by the District Judge. He failed to comply with this order and his appeal was accordingly dismissed. This has given rise to this

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appeal under the Letters Patent. It might be mentioned that this appeal has been valued at the figure which the appellant was required to pay by the learned Judge of this Court in addition to what he had already paid on his appeal.

From what has been stated, it would be clear that the subject-matter of this appeal or the appeal against which the present appeal has been filed was the deficit in the amount of the court-fee which the appellant was called upon to pay, and which he had failed to do. This should be the amount then at which the appeal should be valued. The case might be looked at from a slightly different point of view as well. The Government Pleader contended that it was essential for the appellant to bring the valuation of the appeal to the High Court in a case like this in conformity with the valuation of the suit and to pay a court-fee of Rs. 412-7-0. If this view is allowed to prevail, it would follow that although the appellant allowed his appeal before the District Judge to be rejected by refusing to make up the deficiency, he must have nevertheless paid a court-fee when filing the appeal, necessarily larger than the deficiency which he was required to make up in order to have the point adjudicated whether his action in refusing to comply with the order to pay an additional court-fee was correct or otherwise. The fact that he would be entitled to a refund in the event of his success would hardly be of any consolation to him, as he is all the same running the risk of his appeal, on the question of court-fee alone, being decided against him and losing the whole of the amount paid by him on appeal in the bargain.

The argument which found favour with the majority of the Full Bench of the Nagpur Judicial Commissioners' Court in *Ganpati* v. *Venkatesh*(1) does not, with great respect to the learned Judges who held this view, impress me. It is undoubtedly true that the rejection of a plaint brings the litigation in that Court and in that case to an end, but it is incorrect to suggest, I venture to say with deference, that the rights of the parties have been or can be deemed to have been completely or finally determined. The very fact that a second suit is maintainable militates against the theory of finality.

There is no doubt that the order rejecting a plaint has been included by the Legislature within the definition of a decree—but its specific mention in the definition suggests that if it were not so mentioned, it should not have fallen within that definition. This has been obviously done with the object of providing for an appeal against that order and saving it from being otherwise attacked than by an appeal ; but, in my opinion, it does not lead to an inference that the rights of the parties also should be deemed to have been conclusively determined. The fact remains that when a plaint is rejected on account of deficiency in the court-fee on the plaint the only thing which has been decided in the suit is the question of court-fee and it is this particular *lis* which forms the subject-matter of this appeal. It would therefore follow that the court-fee should be paid on the difference between the court-fee paid by the appellant and that demanded from him.

A.S.V.

(1) A.I.R. 1935 Nag. 83 (F.B.).