

side, and the defendant on the other, and repel the defendant's pretensions. The Court, indeed, could not properly make a binding declaration as between the adoptive mother and the adopted son, both being plaintiffs. It is no doubt on this account that the decree, whilst it declares the right of the widow to present possession as against the defendant, is framed in a form which avoids prejudice to the rights of the plaintiffs *inter se*.

In the result their Lordships will humbly recommend Her Majesty to affirm the decree of the High Court with costs.

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 SHEO SINGH
 RAI
 v.
 DAKHO.

APPELLATE CIVIL.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Pearson.

DEBI SINGH (DEFENDANT) v. BHUP SINGH AND OTHERS (PLAINTIFFS). *

Pre-emption—Pleader's Fees—Act XX of 1865, s. 37.

Held, in a suit for pre-emption, where it was found by the Court that the actual price of the property was less than the price stated in the deed of sale, and the Court gave the plaintiff a decree with costs, that the amount payable by the defendant in respect of the fees of the plaintiff's pleader ought to be calculated, not on a valuation of the property which was found to be false, or on the amount on which the Court fee on the plaint was paid, but on the real value of the property as found by the Court.

This was a suit to enforce the plaintiffs' right of pre-emption in respect of certain shares in certain villages. The suit, which was founded on special agreement, was valued, for the purposes of the Court Fees Act, at Rs. 1,370-5-0. For the purposes of jurisdiction it was valued at Rs. 6,000, the amount entered in the deed of sale as the price of the property. This price the plaintiffs alleged was not the actual price of the property. The Court of first instance found that the actual price of the property was Rs. 2,300, and gave the plaintiffs a decree with costs.

The defendant appealed to the High Court, contending, among other things, that the fees of the plaintiffs' pleader ought not to be calculated on the value of the property as stated in the deed of sale.

* First Appeal, No. 16 of 1878, from a decree of Babu Kashi Nath Biswas, Subordinate Judge of Meerut, dated the 8th November, 1877.

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DEBI SINGH
v.
BHAU SINGH.

Munshi *Hanuman Prasad* and Babu *Oprokash Chandar*, for
the appellant.

Pandit *Nand Lal*, for the respondents.

The following judgments were delivered by the Court :

PEARSON, J., after disposing of the other pleas in appeal, continued :—The pleader's fee clearly should not be reckoned upon a valuation of the properties which is found to be false. Whether it should be calculated on Rs. 2,300, the real value as found in the decision, or Rs. 1,370-5-0, the amount on which the Court fee on the plaint was paid, may be a question. The latest opinion seems to be in favour of the former mode of calculation, which should therefore be adopted in substitution for that which has been adopted in the Court below. With this slight modification, I would affirm the lower Court's decree and dismiss the appeal with costs.

STUART, C. J.—I entirely approve of the view taken of this case by my colleague, Mr. Justice Pearson, and I quite agree with him as to the principle on which the pleader's fee should be calculated. The appeal is dismissed with costs (1).

Appeal dismissed

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FULL BENCH.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Turner, and Mr. Justice Spankie.

A. L. SEALE (DEFENDANT) v. BROWN (PLAINTIFF).*

Will—Executor, Power of—Act X of 1865 (Succession Act), s. 269—Mortgage—Power of Sale.

Certain persons, being executors of the will of an Englishman domiciled in India, such will having been made after the Indian Succession Act came into operation, and charging the testator's estate with the payment of his debts, having as such executors borrowed certain moneys from a bank wherewith to discharge debts incurred by them in the administration of the estate of the testator, gave as such

*Regular Appeal, No. 99 of 1876, from a leave of R. Alexander, Esq., Subordinate Judge of Dehra Dún, dated the 20th May, 1876.

(1) Under the rules framed by the High Court under s. 37 of Act XX of 1865, in suits for moveable and immovable property, where the amount or value of the claim does not exceed Rs. 5,000, five per cent. is the largest

amount payable by any party in respect of the fees of his adversary's pleader. After Rs. 5,000 and up to Rs. 20,000 two per cent. is payable, *vide* C. O. dated the 23rd April, 1866.