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IN THE MAT-
TER OF F. W.
QUARRY.

The letters produced appear to their Lordships to afford ample evidence, under the hand of the appellant, that, in his professional capacity, he was guilty of grave improprieties which the Court could not overlook when the matter was regularly brought under its notice. Such conduct, in the opinion of their Lordships, amounts to "reasonable cause" for suspending a certificated pleader within the meaning of s. 13 of the Act XVIII of 1879.

That being so, the only question which remains for consideration is, whether the learned Judges of the High Court have erred in visiting the offence with twelve months' suspension from office. It must be borne in mind that the Court which awarded that penalty were in a much better position than this Board to estimate the degree of punishment which, in the whole circumstances of the case, and in the interests of the profession and of the public, ought to follow such misconduct on the part of one of its pleaders. Their Lordships cannot, in a case like the present, interfere with the decision of the Court below unless it is clearly shown that the *quantum* of punishment was unreasonable and excessive. Notwithstanding the able and temperate argument of Mr. Branson, they are unable to come to that conclusion, and they will accordingly humbly advise Her Majesty that the appeal ought to be dismissed.

Solicitors for the appellant :—Messrs. *W. Carpenter and Son,*
Appeal dismissed.

CIVIL REFERENCE.

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July 10.

Before Sir John Edge, Kt., Chief Justice.

PIRBHU NARAIN SINGH (PLAINTIFF) *v.* SITA RAM AND OTHERS
(DEFENDANTS) *

Court-fee—Mortgage—Redemption—Decree for redemption conditional on payment of a certain sum—Appeal by mortgagor—Court-fee payable on memorandum of appeal—Act VII of 1870 (Court Fees Act), s. 7, ch. ix.

Where a mortgagor sues for redemption on the allegation that the mortgage debt has been satisfied, and a decree for redemption is passed on payment of a certain

* Reference under s. 5 of the Court Fees Act.

amount, and the mortgagor appeals against the amount he is ordered to pay, the court-fee payable on the memorandum of appeal must, under s. 7, cl. ix of Act VII of 1870, (Court-Fees Act), be computed according to the principal money expressed to be secured by the instrument of mortgage, and not according to the balance which the mortgagor alleges to be due.

Seemle. If the decree had allowed redemption on payment of a certain sum, and the defendant mortgagee was appealing on the ground that the amount due was greater than that sum, the court-fee should be calculated on the difference between the sum mentioned in the decree and the amount alleged by the appellant to be due.

In this case the memorandum of appeal came before the Registrar of the Court on a question as to the sufficiency of stamp. The Registrar referred the question for decision, under s. 5 of the Court Fees Act, in these terms :—

“This is an appeal in a redemption of mortgage case by the plaintiff in the suit.

“The lower Court granted a decree for redemption on payment of Rs. 2,15,446-15-6, while the plaintiff claimed that the whole mortgage money had been paid.

“The appellant appeals against the amount he is ordered to pay for redemption, and the question of the right to redeem is not in contest.

“The question is, whether under these circumstances the memorandum of appeal should be stamped under s. 7, cl. IX of the Court Fees Act, according to the principal money expressed to be secured by the instrument of mortgage, or on the difference between the sum awarded and that which the appellant admits to be due.”

“There are three rulings to the point. The first, in which this Court held that a suit might change its nature in appeal, was in nature very similar to this case, and it was held that the proper stamp was on the money value of the appeal.

“The next case was also decided by this Court. It was in a pre-emption case, but the principle laid down is clear and equally applicable to a redemption

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(1) Legal Remembrancer, vol. I, p. 162.

(2) I. L. R., 6 All., 486.

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of mortgage case. It says that when the right to pre-empt is in question an appeal should be stamped on the value of the property as in the original suit ; but when the question in appeal relates solely to the amount to be paid by the pre-emptor the fee should be calculated *ad valorem* on the amount actually in dispute.

“ The last case deals with redemption cases.

“ The case itself is hardly to the point, as the right to redeem was in issue, but the case quoted in note A *Umar Khan v. Muhammad Khan* (1). seems to the point. It is not very clear whether the right to redeem was also in issue, but the last paragraph but one from the bottom of the page would point to its not being so. If this is so, the Bombay High Court held that in any appeal connected with redemption the stamp should be calculated as in the original suit on the principal amount secured by the mortgage deed.

“ The principle laid down by this High Court in *I. L. R.*, 6 All., 488, commends itself to me as the sounder for the following reasons :—

“ (a) It recognises that the appeal may lie from only part of the decree, which the Bombay ruling does not seem to do, but which is clearly recognised by s. 16 of the Court Fees Act.

“ (b) S. 7 of the Court Fees Act relates only to stamp valuation in suits, and is nowhere made applicable to appeals. In many instances the value in appeal may be definite, whereas in the original suit it could not be ascertained (were provision not made in the Act) until the suit were decided.

“ The question involved is one of considerable importance, and the difference in fee in this case is large, and as there seems a difference of opinion between this High Court and that of Bombay, I refer the matter to the Judge appointed to decide such questions under s. 5 of the Court Fees Act.

“ If the stamp be leviable on the amount secured by the instrument of mortgage, the memorandum seems to be properly stamped.

(1) *I. L. R.*, 10 Bom. 41.

“ If the stamp should be calculated on the sum contested by the appellant there is a deficiency of Rs. 1,825 (2,025—200). I would note that the period of limitation expires on the 17th instant.”

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On the above reference the Chief Justice made the following order :—

EDGE, C. J.—I am of opinion that the stamp is sufficient, and I so decide for the following reasons.

S. 7, sub-s. 9, of the Court Fees Act, VII of 1870, enacts that in suits such as this the amount of fee payable shall be computed according to the principal money expressed to be secured by the instrument of mortgage, and does not make the amount of the fee to depend on the balance which the mortgagor may say is due, or on that which the mortgagee alleges to be due. In the suit the mortgagor claimed a decree for redemption on the allegation that the mortgage debt had been satisfied. So far as the court-fee on the plaint was concerned, it was immaterial whether the mortgage debt had in fact been satisfied, or whether redemption could only be had on payment of Rs. 2,15,446-15-6.

This is the plaintiff-mortgagor's appeal, and it appears to me that the relief which he is claiming in this appeal is a decree for redemption of the mortgaged property on payment of the amount, if any, which is due. That appears to me to be a relief which it is impossible to value. In my opinion we must apply s. 7. sub-s. ix.

If, on the other hand, the decree below had decreed redemption on payment of, say, Rs. 500, and the defendants, mortgagees were appealing on the ground that the amount due was Rs. 2,00,000, I am of opinion that the amount of court-fee should be calculated on the difference between Rs. 500 and Rs. 2,00,000.