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application for review of such order. On this point the Court (STRACHEY, C. J., and KNOX, J.), held that, having regard to the rules of the Court, a judgment was not complete until it was sealed, and that until a judgment was sealed it might be altered by the Judge concerned without the necessity of having recourse to any formal procedure by way of review of judgment.

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January 5.

APPELLATE CIVIL.

Before Mr. Justice Burkitt.

BALLI RAI AND OTHERS (DEFENDANTS) v. MAHABIR RAI (PLAINTIFF) *
*Court fee—Act No. VII of 1870 (Court Fees Act), section 5; Sch. ii, Art 11
—Letters Patent, section 10—Appeal from an order of remand under
section 562 of the Code of Civil Procedure.*

Held that in an appeal under section 10 of the Letters Patent from an order of a single Judge of the Court remanding a case under section 562 of the Code of Civil Procedure the proper court fee is Rs. 2.

THIS was a reference to the Taxing Judge of the Court under section 5 of the Court Fees Act, 1870. An appeal had been filed under section 10 of the Letters Patent from an order of a single Judge of the Court remanding a case under section 562 of the Code of Civil Procedure, and the memorandum of appeal was stamped with a court fee stamp of Rs. 2. On this memorandum of appeal being laid before the stamp reporter of the Court, the following report was made:—

“ 1 stamp Rs. 2.

“ In time up to 15th September 1898.

“ This is an appeal under section 10 of the Letters Patent from the judgment of the Hon'ble Mr. Justice Banerji remanding the Second Appeal No. 531 of 1897, under section 562 of the Code of Civil Procedure.

“ The appellants pay Rs. 2 only as court fee. The question is, whether a court fee of Rs. 2 paid is sufficient. The valuation of this appeal is Rs. 240, so also was that of the Second Appeal, on which an *ad valorem* fee of Rs. 18 was paid.

* Appeal No. 25 of 1898 under section 10 of the Letters Patent.

“There have been similar appeals under section 10 of the Letters Patent from the judgments remanding cases under section 562 of the Code of Civil Procedure, on which an *ad valorem* fee has always been paid. A new question has arisen now. Mr. *Haribans Sahai*, vakil for the appellants, contends that as Rs. 2 is paid on an appeal to this Court from an order passed by lower Courts under section 562 of the Code of Civil Procedure, the fee of Rs. 2 paid on the same principle is sufficient.

“I am really in doubt, but beg to submit the following two points for the consideration of the Taxing Officer:—

“(1) That the Civil Procedure Code makes a distinction between orders and decrees, and hence when appeals are filed from orders under section 588 of the Code of Civil Procedure, Rs. 2 is paid, but under the Letters Patent appeals are filed from judgments and not from orders or decrees.

“(2) That since the establishment of the High Court, the same amount of fee as paid in Second Appeals has hitherto been paid on appeals under the Letters Patent, whether the judgments appealed from dismissed the Second Appeals in default or remanded them under section 562 of the Code of Civil Procedure.”

On this report the Taxing Officer made the following reference to the Taxing Judge:—

“In this case an appeal under section 10 of the Letters Patent has been filed against the judgment of Mr. Justice Banerji in Second Appeal No. 531 of 1897. For the purposes of this reference I quote the words of the judgment which appear necessary:—‘I set aside the decrees of the Court below and remand the case under section 562 of the Code of Civil Procedure, with directions to re-admit it under its original number on the register, and try it according to law on the merits.’

“The appeal against this judgment has been filed on a Rs. 2 stamp, and the stamp reporter brings to notice that hitherto appeals such as these have always been presented on an *ad valorem* fee. The appellants’ counsel contends that a court fee

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of Rs. 2 is sufficient, and that an appeal to this Court from an order passed under section 562 of the Civil Procedure Code by a lower appellate Court can be filed on a Rs. 2 stamp. I am of opinion that the stamp of Rs. 2 is sufficient, and that the practice hitherto prevailing of realizing court fees *ad valorem* in Letters Patent appeals against a judgment formulating an order under section 562, Civil Procedure Code, is wrong.

“Under [section 588, Civil Procedure Code, clause 28, the directing of a lower Court to re-admit a case under section 562 is an ‘order.’ It is not a decree (*vide* section 2 of the Civil Procedure Code). According therefore to Sch. ii, Art. 11 of the Court Fees Act, the present appeal being one not ‘from an order rejecting a plaint, or from a decree or order having the force of a decree’ a fee of Rs. 2 is sufficient.

“The language of section 10 of the Letters Patent does not affect the matter in issue. It is provided in that section that an appeal shall lie against the ‘judgment’ of one Judge (*etc.*, *etc.*). A ‘judgment’ means the statement given by the Judge of the grounds of a decree or order, and in appeals for the purpose of determining jurisdiction, or the amount of court fee payable, regard is had, not to the judgment as a judgment, but as to whether it embodies a decree or an order.

“I consider the matter one of general importance, and particularly so as the practice which has obtained hitherto seems to me to be wrong in law. I accordingly refer the case to the Taxing Judge under section 5, Act VII of 1870.”

On which this order was passed:—

BURKITT, J.—I think a court fee of Rs. 2 is sufficient. That is the fee leviable on an appeal against an order of a District Court remanding a case under section 562 of the Code of Civil Procedure. I know of no reason why a higher fee should be leviable on a memorandum of appeal against an order of a similar nature passed by a Judge of this Court. The wording of the Letters Patent does not affect the question.