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from that refusal, the memorandum of appeal should be stamped with an *ad valorem* court fee. Anyhow the Court Fees Act makes no distinction between preliminary and final decrees, and the word 'decree' used in that Act must bear the ordinary meaning given to that expression in the first part of the definition of the term in the Code of Civil Procedure. It is clear, therefore, that the court fee paid by the present respondent in the court of the District Judge was all that was required by law and there was no deficiency due from him.

The Government Advocate (Mr. *W. Wallach*), was not called upon to reply.

KNOX, TUDBALL and MUHAMMAD RAFIQ, JJ:—We have heard all that the learned vakil for the respondent can urge in support of his contention that he was only bound in the lower appellate court to pay a court fee of annas eight as though he were appealing from an order, instead of an *ad valorem* duty. Looking to the change which has been made by the Legislature in order XXXIV, rules 4 and 5, as compared with sections 88 and 89 of the Transfer of Property Act, we have no doubt whatever that the court fee which he should have paid was an *ad valorem* court fee. The Legislature has deliberately altered the words "order absolute" and replaced them by the words "final decree." This is our answer to the question.

APPELLATE CIVIL.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Tudball.

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July, 8.

YAD RAM (PLAINTIFF) *v.* CHEDA LAL AND OTHERS (DEFENDANTS.)*

Pre-emption—Wajib-ul-arz—*Partition of village into several mahals*—Dastur dehi *relating to whole village*—*Suit by co-sharer of one mahal against co-sharer of another mahal on ground of nearness in relationship to the vendor.*

The *dastur dehi* of a village divided into several mahals, but which nevertheless was held to be applicable to the whole village, and to represent an arrangement come to by the co-sharers in the village amongst themselves, provided, as to pre-emption, as follows:—"If a co-sharer wants to sell his share, he must sell first to near co-sharers, then in the patti, then in the mahal, then in the village." *Held* that the effect of this clause was to give to a co-sharer in one mahal who was a relation of the vendor a preferential right of pre-emption over a co-sharer in another mahal who was not a relation.

* First Appeal No. 99 of 1912 from a decree of Muhammad Husain, First Additional Subordinate Judge of Meerut, dated the 30th of November, 1911.

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THIS was a suit for pre-emption based upon the provisions of the wajib-ul-arz or *dastur dehi* of the village of Sarai Ghasi. The village at one time was divided into a 2½-biswa mahal held by the Skinner family and a 17½-biswa mahal held by other co-sharers. Subsequently the larger mahal was again sub-divided. The *dastur dehi*, however, was apparently applicable to the entire village, and represented an arrangement come to amongst the entire body of co-sharers. The provisions of the *dastur dehi* as to pre-emption were as follows :—"If a co-sharer wants to sell his share, he must sell first to near co-sharers, then in the patti, then in the mahal, then in the village." The property the subject of the present suit was situate in the Skinner mahal. The vendee was a co-sharer in another mahal of the village; and the plaintiff pre-emptor was a co-sharer in a third mahal, but claimed precedence of the vendee owing to his being a relation of the vendor. The court of first instance dismissed the suit. The plaintiff appealed to the High Court.

The Hon'ble Dr. *Sundar Lal*, for the appellant.

Dr. *Satish Chandra Banerji* and Babu *Piari Lal Banerji*, for the respondents.

RICHARDS, C. J. and TUDBALL, J.—This appeal arises out of a suit for pre-emption. The village in which the property is situate is called mauza Sarai Ghasi. At one time this village was divided into a 2½-biswa share, held by the Skinner family, and a 17½ biswa share held by other co-sharers. In course of time the 2½ biswas appear to have been formed into one mahal, and the 17½ biswas into another mahal. The 17½ biswas were afterwards divided into a number of different mahals. The property which is sought to be pre-empted is situate within the Skinner mahal. It appears that on the 13th of February, 1892, this very property was sold and purchased by one Bhola Mal. The present vendor, Ram Sahai, brought a suit for pre-emption, which was successful. He was a sharer in another mahal and he based his suit upon a record set forth in the *dastur dehi* of 1886. His claim was decreed, the court being of opinion that the record in the *dastur dehi* was one of an arrangement between the sharers in the entire village. There is this distinction between the present case and the one just mentioned, that in that case the claim was against a

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stranger whilst, in the present case, the claim is by a sharer in a different mahal, who is a near relation of the vendor against a person who is a sharer in another mahal, but no relation. The court below has decided against the plaintiff and dismissed the suit. It has referred to the case of *Ganga Singh* v. *Chedi Lal* (1). In that case this Court considered at some length what was the proper way to approach the consideration of a case of pre-emption where the issue was the existence or non-existence of a custom of pre-emption, and it pointed out that the weight which should be attached to extracts from the wajib-ul-arzes in different cases varied very much. The circumstances of the present case are very different. The extract from the *dastur dehi* of 1886, has been translated as follows :—

"If a co-sharer wants to sell his share, he shall first sell it to his near co-sharers, then to sharers in the patti, mahal, or the village; and if they refuse to take, then to any one he may like."

A more literal translation would be :—

"A co-sharer must sell first to near co-sharers, then in the patti, then in the mahal, then in the village."

This *dastur dehi*, notwithstanding that the village had been divided into a large number of mahals, was the *dastur dehi* for the entire village. Having regard to the division which had taken place, *karibi* cannot refer to anything except relationship, that is to say, a sharer who is related. Furthermore, the fact that defendant's vendor himself set up the right of pre-emption contained in this very document, is, we think, a very strong point both against himself and his vendee. The title of the defendant's vendor was this very decree in a suit for pre-emption. We are not in any way deciding that a custom of pre-emption exists. There are many reasons for thinking that the growth of such a custom in this village, owned as it was in part by members of the Skinner family, was very improbable. But if the *dastur dehi* records an arrangement between the sharers in the village, it is an arrangement which is still in force. We think there was such an arrangement. There only remains the question whether or not, assuming that an arrangement between the owners of the village as to pre-emption

(1) (1911) I. L. R., 33 All., 605.

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exists, it extends to giving a right of a sharer in one mahal, who is a relation, a preference over a sharer in another mahal who is no relation. We think that the clause, as a whole, can have no other meaning. We, therefore, think the decree of the court below was erroneous and ought to be set aside. Before, however, finally deciding this appeal, it will be necessary to refer an issue to the court below, namely :—

What was the true sale consideration ?

We accordingly refer the above issue to the court below. The court below will receive such evidence relevant to this issue as the parties may adduce. On return of the finding, the usual ten days will be allowed for filing objections.

Issue remitted.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Sir Pramada Charan Banerji.

1913
July, 11.

MAHADEO SINGH AND ANOTHER (DECREE-HOLDERS) *v.* SHEO KARAN SINGH AND ANOTHER (JUDGEMENT-DEBTORS).*

Hindu law—Daughter's estate—Decree for possession of father's estate obtained by daughter—Right of daughter's sons to execute such decree

The daughter of a separated Hindu obtained a decree for possession of her father's estate against certain trespassers. Before, however, she could obtain possession, she died and her sons applied for execution. *Held* that the daughter represented her father's estate when she brought her suit for possession and that persons who succeeded to the estate were entitled to execute the decree which she had obtained.

THIS was an appeal under section 10 of the Letters Patent from a judgement of a single Judge of the Court. The facts of the case are stated in the judgement under appeal which was as follows :—

"The two respondents Mahadeo Singh and Basdeo Singh, with their mother Lakhpati Kuar, instituted a suit for recovery of possession of certain immovable property against one Jagram Singh, on the allegation that the property in suit belonged to one Sarup Singh, who was the father of Lakhpati Kuar and grandfather of the respondents. Jagram Singh was a collateral of Sarup Singh. He resisted the suit on various grounds. The claim of the respondents was dismissed on the ground that it was premature and that it could not be brought in the life-time of their mother ; but a decree was passed in favour of Lakhpati Kuar in her own right as the daughter of Sarup Singh. She was decreed a daughter's estate. The first court passed the decree in her favour on the 26th of

* Appeal No. 46 of 1913 under section 10 of the Letters Patent,