

## APPELLATE CIVIL.

Before Justice Sir Pramada Charan Banerji and Mr. Justice Eyles.  
 RAM PRASAD KALWAR AND ANOTHER (PLAINTIFFS) v. MUSAMMAT  
 AJANASIA AND OTHERS (DEFENDANTS)\*

1922  
 April, 19.

*Court fee—Appeal—Cross objections—Petition setting forth the grounds upon which the respondents proposed to support the decree of the lower appellate court.*

Held that no *ad valorem* court fee was payable on a petition filed by the respondents in a second appeal, which, although it was more or less in the guise of a memorandum of cross objections, in reality contained merely the grounds upon which the respondents proposed to support the decree of the court below, to which the respondents in no wise objected.

Dr. M. L. Agarwala, for the appellants.

Mr. J. M. Banerji, for the respondents.

*Office report.*

"The court of first instance dismissed the plaintiff's claim for recovery of Rs. 698-4-0 on the point of limitation, but holding, as a finding on issue No. 1, that the defendants did borrow the money in suit from the plaintiffs. Plaintiffs then appealed to the lower appellate court and thereupon the defendants filed a memo of cross objection under order XLI, rule 22, of the Code of Civil Procedure as to the finding on issue No. 1, and paid only 8 annas as court fee, presumably on the ground that full court fee had been paid by the plaintiffs appellants on the appeal. As the law stands at present the memo. of cross objection is quite a definite thing from the appeal, for fiscal purposes. Consequently, the defendants respondents must pay *ad valorem* court fee on the value of the subject matter in dispute. I am supported in my views by the fact that the lower appellate court allowed their cross objection. The value of the subject matter being Rs. 698-4-0, a court fee of Rs. 52-8-0 is payable thereon. Deducting 8 annas, already paid, there is a deficiency of Rs. 52 payable by the defendant respondent for the lower appellate court."

This report was brought to the notice of the Court hearing the appeal, and the following order was passed.

\* Second Appeal No. 849 of 1920, from a decree of Abdul Hasan, Subordinate Judge of Jaunpur, dated the 22nd of May, 1920, confirming a decree of Nand Lal Singh, Munsif of Jaunpur, dated the 2nd of July, 1919.

1922

RAM PRASAD  
KALWAR" .  
MUSAMMAT  
AJANASIA

BANERJI and RYVES, JJ. :—We do not agree with the office report. In our opinion no *ad valorem* court fee was payable in regard to the cross objections filed by the respondent. The decree of the court of first instance was in favour of the respondents, as it totally dismissed the plaintiffs' suit. The respondents could support that decree on any ground, even on a ground other than that taken by the court of first instance. If for that purpose they filed a petition stating the reasons on which they supported the decree, that did not amount to cross objections for which an *ad valorem* court fee was payable. The result of the office report would be that the appellant had to pay court fee on the full amount claimed and the respondents, who held the decree of the court of first instance, had to pay another court fee for the same claim, that is to say, two sums of court fees would be realized in respect of the same claim from both the parties. This surely could not be the intention of the Legislature, and we do not think that the respondents were bound to pay *ad valorem* court fees on their cross objections in this case.