

and not beyond. An account has accordingly been prepared, which has been accepted by the parties, and by it it is found that the sum due on foot of these mortgages with interest up to the 28th of September, 1901, amounts to Rs. 3,122-5-6.”

In First Appeal No. 376 of 1911 the same point arose and the decision in the case of *Sri Ram v. Kesri Mal* (1) was again followed. In our opinion this case is on all fours with that of *Sri Ram v. Kesri Mal* (1). We think the proper and the simplest method of settling the equities between the parties is to hold that the prior mortgagee having had possession of the property is not entitled to interest after the date of possession, and we hold accordingly.

We have not been able to find any decision which conflicts in any way with the above-mentioned three cases. The facts in the present case are similar to those in the cases mentioned above and we can see no reason to differ from the rule adopted therein. According to that rule the appellant was entitled to interest up to the date on which he paid off the prior mortgages and the lower court has allowed him that interest.

It must be noticed that the respondents have not challenged the defendant's right to stand upon his prior mortgages in spite of the fact that money was left with the appellant for payment of all the four mortgages. The appeal fails and is dismissed with costs.

Appeal dismissed.

MISCELLANEOUS CIVIL.

Before Mr. Justice Tudball.

BHADUL PANDE AND OTHERS (DEFENDANTS) v. MANNI PANDE AND OTHERS (PLAINTIFFS).*

Act No. VII of 1870 (Court Fees Act), section 4—Letters Patent Appeal from decision of single Judge—Court fee.

Held that no court fee is leviable on an appeal under section 10 of the Letters Patent of the Allahabad High Court from the judgment of a single Judge of the Court.

THIS was a reference to the Taxing Judge of the Court under the Court Fees Act, 1870, the question being whether any court

* Stamp Reference in Appeal No. 71 of 1921, under section 10 of the Letters Patent.

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fee is payable on a memorandum of appeal under section 10 of the Letters Patent from the judgment of a single Judge of the Court.

Munshi *Bhagwati Shankar* (for Munshi *Narain Prasad Ashthana*), for the appellants.

The Government Advocate (*Babu Lalit Mohan Banerji*), for the Crown.

OFFICE REPORT.—“No court fee stamp has been paid in this appeal. Under section 4 of the Court Fees Act (VII of 1870) it must bear proper court-fee stamps which in this case will be Rs. 10, as originally paid in this Court.

It is in time up to this day. 21-4-1921.

After writing the above report the learned counsel has affixed Rs. 2 stamp. Therefore this appeal is deficiently stamped by Rs. 8.”

COUNSEL'S OBJECTION.—“So far the practice has, no doubt, been to pay *ad valorem* court fees on the memorandum of appeals, under section 10 of the Letters Patent, against the judgment of a single Judge of the High Court. But such a practice does not appear to be warranted by law. The only section of the Court Fees Act under which the Court Fees can be claimed on the documents filed in the High Court is section 4 of that Act. That section lays down that all documents filed in any case coming before the High Court—

(1) in exercise of original civil jurisdiction, or (2) in exercise of original criminal jurisdiction, or (3) in exercise of jurisdiction as regards appeals from the judgment of two or more Judges or of a Division Court, or (4) in exercise of its appellate jurisdiction over subordinate courts, or (5) in exercise of its jurisdiction as a court of reference or revision must bear proper court fee stamps as required by that Act.

A single Judge sitting alone is not a Division Court, which is explained by section 13 of the High Courts Act of 1861 and by the Government of India Act, section 108, as a court consisting of two or more Judges. A High Court Judge exercising powers of an appellate court in second appeals as a High Court cannot be said to be a court subordinate to the High Court or under its superintendence; (vide section 107 of the Government of

India Act, and section 10 of the Letters Patent, Allahabad High Court). Therefore a memorandum of appeal in a Letters Patent Appeal against the judgment of a single Judge is not a document contemplated by section 4 of the Court Fees Act and consequently no court fees can be levied thereon.

A court fee stamp of Rs. 2 has been affixed as on an application."

OFFICE REPORT TO TAXING OFFICER.—“Munshi *Narain Prasad Ashikana* being under the impression that under the law no court fee is payable on Letters Patent appeals has filed this appeal apparently as a test case and his written objection, dated the 3rd of May, 1921, contests the correctness of my deficiency report on the 21st of April, 1921. My submission is as under :—

1. Section 4 of the Court Fees Act provides that no document of any of the kinds specified in the first or second schedule annexed to this Act as chargeable with fees shall be filed . . . in the exercise of its jurisdiction as regards appeals from the judgment of two or more Judges of the said Court or of a Division Court . . . unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

Under article 1, schedule 1, of the Court Fees Act every plaint and every memorandum of appeal is to be stamped with a court fee according to the valuation given by the plaintiff or the appellant. The question whether an appeal is allowed from the decision of a single Judge of the High Court, is a different matter; but as it falls within the category of appeals it has to be stamped accordingly. Thus a Letters Patent Appeal stands exactly on the same footing as any other appeal and requires an *ad valorem* court fee

2. The words “Division Court” used in section 4 in contradistinction to “the judgment of two or more Judges of the said court” clearly indicate a court presided over by a single Judge. They appear to have been used to indicate a Court which is not presided over by two or more Judges or by all the Judges of the Court.

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The words "the judgment of two or more Judges of the said Court or of a Division Court" seem to cover the whole ground. To be more plain, there are three possible cases:—

- (a) The Court may be presided over by all the Judges. In such a case there is no appeal provided anywhere to the High Court.
- (b) The Court may be presided over by two or more Judges. In such a case, under certain conditions, a Letters Patent Appeal is provided.
- (c) The Court may be presided over by a single Judge. In such a case an appeal is universally provided under the Letters Patent.

From this consideration it fully appears that the particular clause of section 4, quoted above, is meant to cover Letters Patent Appeals, which must bear an *ad valorem* court fee like other appeals.

3. It has been the practice in this High Court, so far as I have been able to ascertain, from its very inception that Letters Patent appeals always bear an *ad valorem* court fee.

This practice has never been disturbed so far as I am aware. The words "Division Court" in section 4 seem to have always been taken to mean a court presided over by a single Judge of this Court. Otherwise there seems to have been no other justification for such a long established practice. It will be extraordinary if the sense in which these words have so long been acted upon is to be disturbed.

4. So far as appeals against judgments of two or more Judges are concerned they are clearly provided under section 4 and they must bear an *ad valorem* court fee. These appeals are preferred under the Letters Patent, section 10. It does not stand to reason that appeals which are preferred against the judgment of a single Judge, which are also preferred under the same section of the Letters Patent, should bear no stamp and should be treated differently from the former."

TAXING OFFICER'S REPORT:—“This is a matter of such importance that we require an authoritative ruling on the subject, and I must refer it for the decision of the Taxing Judge.”

The following decision was delivered by—

TUDBALL, J.:—This is a reference made by the Taxing Officer to me as Taxing Judge under section 10 of the Court Fees Act. The matter is one of some importance in that it affects a practice of this Court which has been regularly observed for many years.

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A second appeal was filed in this Court, which under the rules in force was triable by a single Judge of the Court. The defendants were the appellants and the appeal was dismissed by Mr. Justice RAFIQ sitting alone. Under section 10 of the Letters Patent an appeal has now been filed against the judgment of the single Judge and the question is whether or not this petition of appeal must bear a court fee stamp upon it. In the past, court fees have regularly been levied on such appeals from judgments of single Judges of this Court. Chapter 2 of the Court Fees Act is that portion of the Act which relates to fees in High Courts and in Court of Small Causes at the Presidency towns. Section 4 is the only section which lays down in what circumstances court fees must be levied in High Courts. It says:—“No document of any of the kinds specified in the first or second schedules of the Act as chargeable with fees shall be filed, exhibited or recorded in, or shall be received or furnished by, any High Court in any case coming before such court, *firstly*, in the exercise of its extraordinary original civil jurisdiction; *secondly*, in the exercise of its extraordinary original criminal jurisdiction; *thirdly*, in the exercise of its jurisdiction as regards appeals from the judgment of two or more Judges of the said court or of a division court; *fourthly*, in the exercise of its jurisdiction as regards appeals from the courts subject to its superintendence; *fifthly*, in the exercise of its jurisdiction as a court of reference or of revision, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.”

It is quite clear that the present petition of appeal comes before this Court in the exercise of its jurisdiction as regards an appeal from a judgment of a single Judge. Section 4 nowhere mentions this jurisdiction as one of those in the case of which court fees have to be levied in accordance with schedules 1 and 2 of the Act. Where the Court is exercising its jurisdiction as

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regards appeals from the judgment of *two* or more Judges, it is clear that the court fee must be levied according to the abovementioned schedules, or where the Court is exercising its jurisdiction as regards an appeal from a Division Court. In this High Court at present there is no such thing as a Division Court. Section 27 of the Letters Patent lays down:—

“ Any function which may be performed by this High Court in the exercise of its appellate jurisdiction may be performed by any Judge or by any Division Court thereof appointed or constituted for such purpose in pursuance of section 108 of the Government of India Act of 1918.”

Section 108 lays down:—

“ That each High Court may by its own rules provide, as it thinks fit, for the exercise by one or more Judges or by *Division Courts constituted by two or more Judges* of the High Court, of the original and appellate jurisdiction vested in the Court.”

So far as I am aware no Division Courts have ever been constituted in this High Court. It is quite clear, therefore, that the present case is not covered by section 4 of the Court Fees Act. There being therefore no law under which this Court is bound to levy court fees in the present instance, the petition of appeal must be received without any court fee whatsoever. It is difficult to say why the present class of case has not been considered in section 4 of the Court Fees Act. It may be that the word “two” in the clause which governs appeals under the Letters Patent was in error written for “one.” If that clause ran as follows:—

“ Or in the exercise of its jurisdiction as regards appeals from the judgment of one or more Judges of the said Court or of a Division Court”—the clause would cover the present case. But for some reason unknown to me the word “two” has been used, and the Act does not cover the case of an appeal from the judgment of a single Judge under Letters Patent, unless that single Judge constitutes a Division Court; though it seems to be that under section 108 of the Government of India Act a Division Court cannot under that section consist of less than two Judges. I, therefore, hold that no court fees are leviable on the present petition of appeal.