

1938
 EMPEROR
 v.
 YUSUF
 MIAN

that the burden of proving under section 215 of the Indian Penal Code that the accused person used his best endeavours or the means in his power to cause the offender to be apprehended and convicted of the offence is upon him. This also seems to be the conclusion to be drawn from the provisions of the Indian Evidence Act. The clear meaning of the section in my judgment is that it is an offence to receive money for helping any person to recover property stolen or misappropriated and that there is an exception only in favour of a man who can show that he used all means in his power to cause the apprehension of the offender. Under the provisions of section 105 of the Indian Evidence Act, where a person is accused of any offence the burden of proving the existence of circumstances bringing the case within any special exception or proviso contained in the Code or in any law defining the offence is upon him and the court shall presume the absence of such circumstances.

I therefore hold that the burden of proving that they had used all means in their power to bring about the apprehension of the offenders was upon the applicants in the present case and it is quite clear that they never made any attempt to discharge that burden. The application is rejected.

MISCELLANEOUS CIVIL

Before Mr. Justice Collister and Mr. Justice Rajpai

1938
 April, 21

PAHLAD SINGH (PLAINTIFF) v. NIADAR SINGH AND ANOTHER
 (DEFENDANTS)*

U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), section 33—Debtor's suit for account—Appeal for reduction of the amount adjudicated—Court fee on appeal—Ad valorem on the amount sought to be reduced—Court Fees Act (VII of 1870), section 7(iv)(f); schedule I, article 1—Valuation of relief—Fictitious valuation.

When in a suit for account under section 33 of the U. P. Agriculturists' Relief Act the court has adjudicated and declared

*Miscellaneous Case No. 432 of 1937.

the amount due from the plaintiff to the defendant, and the plaintiff appeals, seeking for reduction of such amount, then, whether the defendant has or has not applied for and obtained a decree under sub-section (2), *ad valorem* court fee on the appeal must be paid, the amount thereof being calculated according to article I of schedule I of the Court Fees Act upon the amount by which the plaintiff seeks reduction in his appeal. The appellant, who seeks reduction by a definite amount, is not entitled to put a fictitious valuation on his memorandum of appeal, for the purpose of section 7(iv)(f) of the Court Fees Act.

1938

 PAHLAD
SINGH
v.
NIADAR
SINGH

The U. P. Agriculturists' Relief (Amendment) Act, Local Act IX of 1937, has provided for court fees payable on suits under section 33 of the U. P. Agriculturists' Relief Act, but no such provisions have been enacted by it in respect to appeals; the court fees on appeals are therefore governed by the Court Fees Act.

The parties were not represented.

COLLISTER and BAJPAI, JJ.:—This is a reference by the District Judge of Meerut. One Pahlad Singh instituted a suit under section 33 of the Agriculturists' Relief Act (Local Act XXVII of 1934) against certain persons. The trial court declared that a sum of Rs.1,830-2-0 was due from the plaintiff to the defendants; but the plaintiff was not satisfied with this decree and appealed to the District Judge praying that the amount found due from him to the defendants be reduced to Rs.1,031. The learned District Judge has referred the following question to this Court for determination: "Whether in an appeal for reduction of the amount adjudicated by the trial court in a suit under section 33 of the Agriculturists' Relief Act to be due from the appellant to the respondent *ad valorem* court fee should be charged on the amount by which reduction is sought, and if not, what is the court fee chargeable?"

A more or less similar matter came before the Taxing Judge of this Court in First Appeal No. 234 of 1936. The learned Judge observed in his order, dated the 20th of April, 1936: "It is not stated whether defendant has or has not paid the court fee (i.e., on an application

1938

PAHLAD
SINGH
v.
NIADAR
SINGH

such as is referred to in sub-section (2) of section 33). If the defendant has paid the court fee, then the decree is in fact a simple money decree in favour of the defendant against the plaintiff. The plaintiff on appeal desires that that money decree should be reduced by one sum of Rs.2,000 and another sum of Rs.590. In that case the plaintiff appellant would have to pay *ad valorem* fees on these two amounts. If, however, the defendant has failed to pay the court fee within the time specified, the decree of the court below remains a mere declaratory decree and the Rs.10 court fee paid on the appeal is sufficient." The learned Judge thereupon directed that an inquiry be made as to whether the defendant had or had not paid the necessary court fee and so obtained a decree for money payable under section 33(2).

We do not know whether or not in the present case the defendants have applied for and obtained a decree for recovery of the sum of money which has been found due to them from the plaintiff. In the event of their having done so before the filing of this appeal, we are in agreement with the view expressed by the Taxing Judge in the aforementioned order that the plaintiff will be required to pay *ad valorem* court fees on the amount by which he wants the decree to be reduced. This fee will have to be determined in accordance with the provisions of the Court Fees Act.

If the defendants have not applied for and obtained a decree, the matter is not so simple. The learned Taxing Judge was of opinion that a court fee of Rs.10 would be necessary, but in *Anis Begam v. Shyam Sundar Lal* (1) it was held by a Bench of this Court that a suit under section 33(1) of the Agriculturists' Relief Act is not a suit for declaration, but is a suit for an account of money and it should be so valued. The valuation of such suits is provided for by rule 28 of chapter XX of the General Rules (Civil), published in the *Government Gazette* of the 11th of January, 1936, and according to that rule

(1) I.L.R. [1937] All. 965.

such suits are valued for the purposes of the Suits Valuation Act at such amount exceeding Rs.100, and not exceeding Rs.500, as the plaintiff may state in his plaint. The court fees which are payable in such suits are laid down in Local Act IX of 1937, under which schedule VI has been added to the other schedules appended to the Act. No such provisions, however, have been enacted in respect to appeals. There can be no doubt that the declaration which is passed by the court under the first part of sub-section (2) of section 33 is a decree within the meaning of section 2(2) of the Civil Procedure Code, and an appeal lies therefrom; and we have to consider what court fee is payable on such an appeal where the defendant has not applied for and obtained a decree under the second portion of sub-section (2) of section 33. Since no provisions about court fees have been enacted in respect to appeals, we must have recourse to the rules applicable to ordinary suits. In other words, we must look to the provisions of the Court Fees Act. Section 7(iv)(f) of that Act provides that the amount of court fee payable in an appeal arising out of a suit for accounts shall be according to the amount at which the relief is valued in the memorandum of appeal. The amount of such court fee will be computed under article 1 of schedule I of the Act, the court fee chargeable being in accordance with the valuation which is placed upon his appeal. In the present case the appeal should be valued at Rs.799-2-0, this being the amount by which the plaintiff seeks to have the account reduced. Since the plaintiff seeks relief in respect to this amount, he cannot be allowed to put an arbitrary value on his memorandum of appeal. In the case of *Jageshra v. Durga Prasad Singh* (1) a prior mortgagee had sued upon his mortgage and obtained a final decree for sale for Rs.6,818-12-5. A puisne mortgagee, who had not been a party to that suit, thereafter sued the prior mortgagee praying firstly

1938

PAHLAD
SINGH
v.
NIADAR
SINGH

1938

PAHLAD
SINGH
v.
NIADAR
SINGH

for a declaration that the defendant was not entitled to bring to sale the property comprised in the plaintiff's mortgage and secondly for an injunction restraining the defendant from bringing the said property to sale. The first relief was valued on the amount of the defendant's decree, namely Rs.6,818-12-5, and a court fee of Rs.10 was paid in respect to it. It was held by a Bench of this Court that *ad valorem* court fee should be paid. It was apparently suggested in arguments before this Court that it was by an oversight that the plaintiff had valued the relief in the way she did and that it would have been open to her to have valued it at a nominal sum. At page 504 RICHARDS, C.J., observed: "I cannot at all agree to any such contention. Section 7 says that the *ad valorem* court fee shall be paid 'according to the amount at which the relief sought is valued in the plaint or memorandum of appeal. In all such suits the plaintiff shall state the amount at which he values the relief sought.' It seems to me that the proper meaning to be attached to the latter words is that the plaintiff shall truly state the amount at which he values the relief sought, and that it cannot mean that a plaintiff is entitled to put in a fictitious value when the relief is capable of valuation." With those observations we are in agreement.

The result is that in either case, i.e., whether the defendants have or have not sought and obtained a decree, *ad valorem* court fees on the appeal should be paid, the amount being calculated according to article 1 of schedule I of the Court Fees Act upon the amount by which the plaintiff seeks reduction in the account.

This is our answer to the reference.