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IN THE MATTER OF A PLEADER.

that in this particular instance the Bar Council have acted otherwise than honestly, fairly and without prejudice, and in these circumstances consider that we should not be justified in refusing to accept their objections. We accordingly regret that we are unable to allow the enrolment of Mr. *R.* as an advocate of this Court. We point out here that this fact will in no way interfere with his practice in the Bara Banki courts where he is practising already.

Application rejected.

ORIGINAL CIVIL.

Before Mr. Justice A. G. P. Pullan.

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November, 22.

RAJA MOHAMMAD MUMTAZ ALI KHAN (PLAINTIFF) *v.* RAJA SYED MOHAMMAD SA'ADAT ALI KHAN (DEFENDANT).*

Court Fees Act (VII of 1870), schedule I, article 1—Proviso—Written statement, claiming set-off or putting forward counter claim—Maximum court-fee payable on written statement pleading set-off or counter claim.

The Court Fees Act does not authorize the recovery of any sum by way of court-fee in excess of Rs. 3,000. It is true that the proviso to article 1 of schedule I refers only to the maximum fee leviable on a plaint or memorandum of appeal, and leaves out any reference to a written statement pleading a set-off or counter claim, but, as there is nothing in the Act to suggest that there is any fee in excess of Rs. 3,000 leviable on a sum upwards of Rs. 4,10,000 there is no authority for charging a larger sum on a written statement than that fixed as the maximum in schedule I. This schedule is simply headed "*Ad valorem Fees*" and the table of reference applies to the whole schedule and not in particular to article 1, which is the only article which makes any proviso indicating that there is a different maximum for the fees leviable on a written statement. There is no reason to confine the heading of the first column of the table of rates to a plaint or memorandum of appeal, rather these words apply equally to written statements claiming a set-off.

In re *Report of Chief Inspector of Stamps.*

*Original Suit No. 7 of 1928.

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PULLAN, J. :—This matter has been laid before the court for consideration of a report made by the Chief Inspector of Stamps, United Provinces. He found that in this suit the written statement of the defendant, besides claiming set-off of all the expenses incidental to the management and ownership of the property, claims certain specific sums which, in his opinion, should be charged with court-fee. The first of these claims is half the expenditure incurred by the defendant in defending the title suit against one Abdul Halim representing a sum of over one and a half lakhs. The second consists of two items, a sum of Rs. 17,000 said to have been borrowed on behalf of the plaintiff from the defendant, and a second item of Rs. 8,084-6-0 which has been realized by the Crown from the defendant for income-tax payable by the plaintiff. The last involves a very large sum said to have been left in cash by the late Rani Kaniz Begam, Rani of Utraula, together with her unpaid dower debt to half of which the defendant claims to be entitled. The Chief Inspector was of opinion that possibly the first item, that is expenditure on the law-suit, might be regarded as an equitable set-off, but in any case, the sums claimed, even apart from this, being greatly in excess of the maximum of Rs. 4,10,000 mentioned in schedule I of the Court Fees Act, the defendant should pay a duty of Rs. 3,000. On this report, I asked for a note by the Deputy Registrar. He has accepted the Chief Inspector's report in principle, but has maintained first that there is no such thing as an equitable set-off and that, therefore, the sum paid on account of the law suit should also be charged with stamp duty, and secondly that there is no maximum prescribed for a set-off and that, therefore an *ad valorem* duty should be charged on the whole amount claimed by the defendant.

I have heard counsel on these points, and I am satisfied that this suit is a suit for profits. Without going into the facts, I may say that there was a com-

promise on the basis of which the Raja of Utraula, who is the plaintiff in this case, was entitled to one-half of the profits of the Nanpara estate. The validity of the compromise is no doubt challenged, but, if it were accepted, the Raja of Utraula would undoubtedly be entitled to a considerable sum by way of profits which have not been paid to him. In a suit of this nature it was open to the defendant, who was the lambardar, to state in detail payments made by him on behalf of the estate which should be taken into account for ascertaining the amount payable by way of profits. The expenses of a law suit conducted by the lambardar for the benefit of the estate must certainly be taken into account in assessing the profits due to a co-sharer, and the same may very well be the case in respect of the two items of Rs. 17,000 and Rs. 8,084-6-0, the first of which is said to have been advanced to the plaintiff and the second paid as income-tax on the plaintiff's behalf. I do not consider that these sums can be regarded as a set-off in a suit for profits and I am not, therefore, prepared to agree with the report or the office note in respect of these items.

The last item is of a different nature. If the defendant were seriously claiming a half share in 13 lakhs out of the estate of the late Rani of Utraula, it would be a claim which has nothing to do with the profits of the Nanpara estate and would be a counter claim chargeable with duty, but Mr. *Wasim* for the defendant points out that he does not wish to make any such claim. He says that the claim is time-barred and that he has only mentioned it in his written statement to show why he has not paid a certain portion of the profits due to the plaintiff. It is not necessary in a written statement to give reasons for non-payment and it is useless to put forward a time-barred claim. If this claim were allowed to remain in the written statement, I would certainly hold that it is liable to pay a court-fee. Mr. *Wasim* agrees that this passage may be deleted from the written statement, and if this is done there will be no need for

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the defendant to pay any amount in respect of the court-fee on his written statement.

As the Deputy Registrar has asked for a finding on the last point raised by him, I am prepared to say that, in my opinion, the Court Fees Act does not authorize the recovery of any sum by way of court-fee in excess of Rs. 3,000. It is true that the proviso to article 1 of schedule I refers only to the maximum fee leviable on a plaint or memorandum of appeal, and leaves out any reference to a written statement pleading a set-off or counter claim, but, as there is nothing in the Act to suggest that there is any fee in excess of Rs. 3,000 leviable on a sum upwards of Rs. 4,10,000 I do not consider that there is any authority for charging a larger sum on a written statement than that fixed as the maximum in schedule I. It may be remarked that this schedule is simply headed "*Ad valorem* Fees" and the table of reference applies to the whole schedule and not in particular to article 1, which is the only article which makes any proviso indicating that there is a different maximum for the fees leviable on a plaint or memorandum of appeal from those leviable on a written statement. I see no reason to confine the heading of the first column of the table of rates to a plaint or memorandum of appeal? Rather it appears to me that these words apply equally to written statements claiming a set-off. The words are "when the amount or value of the subject matter exceeds . . . but does not exceed . . . ". I give this opinion in respect of the maximum fee only, but offer no opinion as to whether in the case of, for instance, a declaratory suit filed on a ten-rupee stamp a claim for a set-off should or should not be charged *ad valorem*.

I, therefore, order that the written statement be accepted without further fee and that the file of this suit and the connected suits should be submitted forthwith to the Commissioner for disposal. With the consent of Mr. *Wasim* I order that paragraph 23 be deleted from the written statement.