

APPELLATE CIVIL

Before Mr. Justice G. H. Thomas, Chief Judge, and Mr.
Justice Radha Krishna Srivastava

SHRI SAUBHAGYAWATI DEVI AND ANOTHER (CLAIMANTS-
APPELLANTS) *v.* DEPUTY COMMISSIONER, KHERI, 1939
December, 21
MANAGER, COURT OF WARDS, MAHEWA ESTATE (APPLICANT-
RESPONDENT)*

Court Fees Act (VII of 1870), section 17—Encumbered Estates Act XXV of 1934), section 9—New section 17 of Court Fees Act, whether applies to written statement under section 9, Encumbered Estates Act.

The new section 17 of the Court Fees Act is not applicable to the written statement of a creditor under section 9 of the Encumbered Estates Act. It applies to suits, and a written statement under section 9 is not a suit.

Messrs. *Niamatullah* and *L. S. Misra*, for the appellants.

THOMAS, C.J. and RADHA KRISHNA, J.:—The appellants were creditors in an Encumbered Estates Case. They filed a written statement of their claim under section 9 of the Encumbered Estates Act claiming certain amounts on the basis of six deeds. This claim was disallowed by the learned Special Judge, and the appellants have come up in appeal to this Court under section 45 of the Encumbered Estates Act. They valued their appeal at the amount for which they had lodged their claim in the court below, that is a sum of Rs.58,650 and paid court-fee on that amount. The Chief Inspector of Stamps has reported that court-fee ought to have been paid on separate amounts under each deed which were the subject-matter of the claim. In his report he has calculated the court-fee due as Rs.3,432-8. Thus there is a deficiency of Rs.1,605 according to him. The Chief Inspector of Stamps has referred to the new section 17 of the Court Fees Act in support of his report.

We have heard the learned Counsel for the appellants who contests the report. In our view section 17 of the

*First Civil Appeal No. 70 of 1939, against the order of Gauri Shankar Varma, Esq., Special Judge, First Grade, of Kheri, dated the 24th of March, 1939.

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Thomas, C.J.
and
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J.

Court Fees Act applies to suits where the plaintiff in the same suit united several causes of action against the same defendant or the same defendants jointly and to appeals arising out of those suits. In the present case this section is not applicable for the simple reason that a written statement under section 9 is not a suit. Further, it is to be noticed that a claim under section 9 by a creditor has to be made by one written statement. It is not open to him as is implied by rules 3 and 6 of Order II of the Code of Civil Procedure that the plaintiff may bring separate suits in respect of each document. Section 9 clearly enjoins upon the creditor to file a written statement in respect of his claim which may consist of claims upon several documents. It is not open to the Court either to ask the creditor as contemplated by rule 6 of Order II to split up his claim into several on each deed or to order separate trials in respect of separate causes of action.

We do not agree with the Chief Inspector of Stamps that a written statement under section 9 can be treated as a suit in which several causes of action have been united together.

A reference to Schedule I, Article I would show that the appellants are liable to pay *ad valorem* court-fee in an appeal on the amount or value of the subject-matter in dispute in the appeal. The amount of the object-matter in dispute in appeal is the total amount of the claim by the creditor even though that claim may have arisen under separate and distinct deeds.

The report of the Chief Inspector of Stamps is entirely misconceived, and we do not agree with it. We, therefore, hold that the amount of court-fee paid by the appellants was sufficient.

Report of the Chief Inspector of Stamps rejected.