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the necessary certificate to enable an appellant to apply to the revenue authorities to obtain a refund of an excess court-fee paid on a memorandum of appeal. We do not for a moment wish to question in any way the propriety of the decision in that case to which one of us was a party and we have no doubt whatever that the court has inherent power in proper cases. This, however, does not seem to us to be such a case. The application for revision must be dismissed.

*Application dismissed.*

### APPELLATE CIVIL.

*Before Dawson Miller, C. J. and Kulwant Sahay, J.*

JANAK PRASAD

v.

ASKARAN PRASAD.\*

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March, 22.

*Court-fees—appeal, dismissal of, on the ground of non-payment of deficit court-fee—fee already paid, whether can be refunded—sum of money paid into court, whether can be a court-fee—Registrar, power of, to order deposit of money as condition precedent to the case being tried.*

When an appeal has been dismissed on the ground that a deficit in the court-fee ordered to be paid has not been paid the amount of court-fee deposited with the memorandum of appeal or during the hearing of the appeal is not liable to be refunded.

A sum deposited in court as a court-fee is nevertheless a court-fee although it is not converted into the shape of a stamp.

The Registrar of the High Court has no power to direct an appellant to deposit any sum of money in court as a condition precedent to having his case tried.

The facts of the case material to thus report are staled in the judgment of the court.

\*Miscellaneous Judicial Case no. 149 of 1926.

(1) (1918) 3 Pat. L. J. 452.

*S. N. Rai*, for the appellant.

*A. B. Mukherji*, Government Pleader, for the crown.

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DAWSON MILLER, C. J. AND KULWANT SAHAY, J. This is an application on behalf of the appellant asking us to vary or set aside an order of the Registrar dated the 31st January last refusing the appellant's application for a refund of a sum of Rs. 900 paid into court under an order of the Registrar passed on the 27th April, 1926, in lieu of a court-fee payable in the appeal. The facts of the case are a little involved but, shortly put, it appears that the appellant applied to appeal in forma pauperis from the judgment of the lower appellate court which was against him. That application was dismissed. Thereupon he proceeded to appeal in the ordinary way. The appeal was valued at Rs. 2,24,000 made up as follows:—Rs. 2,06,000 the value of the property which he claimed and Rs. 18,000 the estimated value of the mesne profits. The fee payable upon the valuation was something approaching Rs. 3,000 and the appellant, when his application to appeal in forma pauperis was rejected, was allowed time in the first place up to the 10th February, 1926 to deposit the requisite court-fee. Subsequently he was granted further time and still did not deposit the fee. Then in April he petitioned the court to be allowed to claim the property only and not the mesne profits. He further claimed that the value of the property should be taken not as its actual value but as 20 times the Government revenue which would amount to Rs. 14,000 the fee upon that valuation being a sum of Rs. 900. His reason for this was that he contended that the suit was not a declaratory suit with consequential relief, but merely a suit for possession. That matter, however, was decided against him and in the meantime he was asked by the Registrar to deposit the sum of Rs. 900 which was the court-fee payable even upon the assumption that his own valuation was correct. The

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Registrar directed that the record should be sent for from the lower court and that the Stamp Reporter should make a report and to that order he added these words :—

“ In the meantime the appellant do deposit Rs. 900 by to-morrow.”

Obviously what the Registrar meant by that order was that the appellant should pay a court-fee of Rs. 900 by the following day. The appellant, however, read the order literally and instead of himself purchasing a stamp of the value of Rs. 900 he deposited Rs. 900 in cash in court. Subsequently, the Stamp Reporter having reported against his claim to have the property valued at 20 times the Government revenue, he was directed to pay the deficit court-fee. This he did not do and in spite of the fact that time was extended from time to time still he did not pay the court-fee. Finally an order was passed that if he did not pay the court-fee by a certain date his appeal should be dismissed. The court-fee was not paid and the result was that his appeal was dismissed.

He now asks that the sum of Rs. 900 deposited by him on the 28th April should be refunded and the only question is whether that is to be regarded as the deposit of a court-fee, although an insufficient court-fee, or whether it should be regarded as a deposit merely to enable the appellant to have the question decided as to what was the actual court-fee to be paid. We may state at once that the Registrar had no power to direct the appellant to deposit any sum of money in court as a condition precedent to having his case tried. The only power he had was to direct the appellant to pay the requisite court-fee. If the appellant subsequently convinced the court that the fee was greater than he was bound to pay he could no doubt have got a refund under the provisions of the Court-fees Act. Assuming that this sum of Rs. 900 had been paid into court as it ought to have been in the form of a stamp then there is no provision in the Court-fees Act, or indeed anywhere else, for refunding a court-

fee which has been deposited with the memorandum of appeal, or during the hearing of the appeal, when the appeal has been dismissed on the ground that a deficit in the court-fee ordered to be paid has not been paid. It is clear therefore that if this sum of Rs. 900 is to be treated as a court-fee the appellant has no right to claim it back, nor has the court any power to order it to be refunded. We think that the order of the Registrar dated the 27th April must be taken as an order directing the appellant to pay, at all events, the court-fee which he was contending was the proper court-fee, because up to that time no court-fee had been paid at all and he had been directed on several previous occasions to pay the court-fee within a definite time and he had failed to do so. In our opinion it can make no difference whatever that the sum deposited in court undoubtedly as a court-fee was not converted into the shape of a stamp. That ought to have been done before the sum was deposited in court by the appellant himself. It might have been done by the Registrar or some official in the office the moment the sum was deposited in court because it ought to have been in the form of a stamp, and the suggestion that this was merely a direction that the appellant should give a sort of security amounting to Rs. 900 as a condition precedent to having his case heard at all seems to us to be an argument which we cannot accede to. The Registrar had no power to pass such an order and although when literally read his order might appear to be that the appellant should deposit a sum in cash of Rs. 900 there can be no doubt whatever that he meant that the appellant should deposit the court-fee which he himself was claiming was the proper court-fee, and we think that this money paid into court must be treated as the court-fee and cannot be treated as anything else. In these circumstances we are of the opinion that this application fails and that the order of the learned Registrar must be affirmed.

*Application dismissed.*

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