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the convictions and sentences must be set aside. We do not consider it necessary that the accused should be subjected to the harassment of a retrial, particularly in view of the fact that the sentences imposed upon most of them were to run concurrently with the sentences passed in the case which has been disposed of in criminal revision no. 20 of 1929 in which the convictions were upheld. We therefore set aside the order of the Lower Court and direct that the petitioners in this case be acquitted.

JWALA PRASAD, J.—I agree.

Rule made absolute.

S. A. K.

APPELLATE CIVIL.

Before Macpherson and Dhavle, JJ.

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Jan., 25.
April 8.

DEONANDAN MISRA

v.

GANGA PRASHAD.*

Appeal—valuation—decree for possession and mesne profits—appeal by defendant against whole decree—appeal, value of, must be value of the suit—absence of doubt as to the amount of court-fee payable—Code of Civil Procedure, 1908 (Act V of 1908), section 149, applicability of.

G brought a suit against *D* for a declaration that a certain rehan deed was valid, for recovery of possession of the rehan property and for antecedent mesne profits, and he valued the suit at Rs. 2,084-3-6, Rs. 900 being the value of the property and Rs. 1,184-3-6 being the amount of the mesne profits. The suit was decreed. *D* preferred an appeal to the District Judge against the whole decree but valued his appeal

*Appeal from Appellate Decree no. 139 of 1928, from a decision of A. C. Davies, Esq., I.C.S., District Judge of Shahabad, dated the 5th November, 1927, confirming a decision of Babu Tulsi Das Mukharji, Subordinate Judge of Shahabad, dated the 10th August, 1927.

at Rs. 900 paying a court-fee of Rs. 40 only instead of the proper court-fee of Rs. 88-8-0.

On the 19th September, 1927, that is, on the last day of limitation Rs. 48-8-0, the deficit court-fee on Rs. 900, was paid but the valuation of the appeal was not altered. The District Judge, on that date, directed that the appeal should be valued at Rs. 2,084-3-6 and the deficit court-fee of Rs. 91-8-0 should be filed within the period of limitation. The appellant took no steps till the 2nd of November, when a petition was filed on his behalf which merely submitted that the appellant was not bound to pay court-fee on the decree for mesne profits. The District Judge held that the appellant was bound to pay court-fee on the mesne profits claimed and, as that had not been done, dismissed the appeal on the ground of limitation.

Held, in second appeal, (*i*) that the appellant was bound to value his appeal against the whole decree at the same amount at which the subject-matter was valued by the plaintiff in the first court;

Bunwari Lal v. *Daya Sunker Misser*(1), followed.

(*ii*) that in the circumstances of the case, when the appellant had throughout maintained the position that no further court-fee was payable at all, and there being no doubt as to the amount of the court-fee payable, section 149, Code of Civil Procedure, 1908, was not applicable.

Ram Sahay Ram Pande v. *Kumar Lachmi Narayan Singh*(2), referred to.

The facts of the case material to this report are stated in the judgment of Macpherson, J.

N. N. Singh, for the appellant.

S. Dayal and *K. Dayal*, for the respondent.

8th April, 1929.

MACPHERSON, J.—This second appeal is preferred by the contesting defendants and their representatives who were the appellants in the lower appellate court against the dismissal of their appeal by that court as barred by limitation because the full court-fee had not been paid within the period of limitation.

The suit was instituted for a declaration that a rehan bond executed by the defendant no. 4 Musammat

(1) (1908-09) 13 Cal. W. N. 875. (2) (1918) 3 Pat. L. J. 74.

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Jogin Kuar was valid, for recovery of possession of the rehan property and for antecedent mesne profits. The valuation of the rehan property was given as Rs. 900 and that of the antecedent mesne profits as Rs. 1,184-3-6 and court-fee was paid upon Rs. 2,084-3-6. The suit was decreed against the contesting defendants with costs, the order being that the plaintiff should recover possession of the rehan property and that the amount of the mesne profits to which they were found to be entitled should be determined in a separate proceeding. In calculating the costs the full stamp fee and pleader's fee on Rs. 2,084-3-6 were allowed to the plaintiff.

The judgment of the Subordinate Judge was delivered on 10th August, 1927. The contesting defendants filed an appeal on the 1st September, 1927. They valued the appeal at Rs. 900 and paid court-fee of Rs. 40 only instead of the proper court-fee of Rs. 88-8-0. On the same date the learned District Judge ordered that the appeal 'be properly valued and deficit court-fee be paid within the period of limitation'. On the 19th September, which was the last day of limitation, the deficit court-fee of Rs. 48-8-0 was filed; but the valuation of the appeal was not altered. The learned District Judge on that date directed that the appeal should be valued at Rs. 2,084-3-6 and the deficit court-fee of Rs. 91-8-0 should be filed within the period of limitation and he indicated the decision in *Bunwari Lal* v. *Daya Sunker Misser*(1). The appellants took no steps till the 2nd November when a petition was filed on their behalf which merely submitted that the appellants were not bound to pay court-fee on the decree for mesne profits. The learned District Judge in his order of the 5th November observed that the petition was not moved, went on to hold that it was clear that the appellant was bound to pay court-fee on the mesne profits claimed and as that had not been done dismissed the appeal on the ground of limitation.

(1) (1908-09) 13 Cal. W. N. 815.

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This second appeal has been preferred against that order and Mr. Nirsu Narain Singh has in the main argued two points, the first of which is that court-fee is not payable on the mesne profits or at least on the whole of the mesne profits as valued by the plaintiff but only on a valuation of the mesne profits to be made by the defendants-appellants. To my mind there is no substance in this submission even if it were not covered by authority and the defendant-appellant is bound in circumstances like the present to value his appeal preferred against the whole decree at the same amount at which the subject-matter was valued in the first court. The provisions of a statute enacted for purposes of revenue should not be examined as to their reasonableness in all eventualities. But apart from that consideration there is prima facie nothing unreasonable in the defendant-appellant paying the court-fee in such circumstances, since it is the duty of the appellate court to see that if he has a good case the court-fee is reimbursed to him or if, as is alleged in this case, the mesne profits have in any case been overestimated from ulterior motives that at least a direction is made making the costs due to the claim for mesne profits depend upon the eventual result in respect of the mesne profits, so that if a plaintiff has misused the statute enacted for revenue purposes he alone shall suffer and the defendant shall not. But as has been already indicated, the matter is covered by authority. In *Bunwari Lal* v. *Daya Sunker Misser*(1), to which the learned District Judge drew the attention of the appellants the matter has been fully discussed in circumstances practically similar to the present. The views there expressed have my respectful concurrence and appear to conclude the matter. In this Court the Taxing Judge (Roe, J.) in 1918 in *Manik Chand Ram* v. *Bibi Najiban*(2) followed the Calcutta decision. The learned Advocate for the appellants cites *Kanhaiya Lal* v. *Seth Ram Sarup* (3). That decision is, however, distinguishable as a

(1) (1908-09) 13 Cal. W. N. 815. (2) (1919) 49 Ind. Cas. 962.
(3) (1922) I. L. R. 44 All. 542.

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suit for accounts, not in pari materia with the present case, and in any case I am not prepared to accept it in so far as it appears to differ from the decisions which I have already cited. This point, therefore, has no substance.

MACPHERSON, J.

The second contention is that in the circumstances the provisions of section 149 of the Code of Civil Procedure should be applied. It is urged that there was at least some room for doubt in the minds of the appellants whether court-fee on the mesne profits or at least on the sum of Rs. 1,184-3-6 was payable in appeal and reference is made to the decision of this Court in *Ram Sahay Ram Pande* v. *Kumar Lachmi Narayan Singh*(1) where it is suggested that the court may exercise its discretion in favour of the appellant when the question of the amount of the court-fee is open to doubt or when an honest attempt appears to have been made to comply with the law. On the other hand, Mr. Siveshwar Dayal on behalf of the respondents has pointed out that appellants throughout maintained the position that no further court-fee was payable at all and that they could not be in any doubt, as the initials of their legal adviser appear against the order of the 19th September in which attention is drawn to *Bunwari Lal* v. *Daya Sunker Misser*.(2) The appellants in my judgment were never in any doubt and they made no real attempt to comply with the law. The fact is that at the time they were not in a position to pay the court-fee. Manifestly they experienced difficulty even in collecting money to pay the court-fee on a valuation of Rs. 900. They paid less than half the court-fee on that valuation at the time of filing the appeal and could only pay the balance on the last day of limitation. It is a safe inference that on that day they would not have been in a position to pay the court-fee on Rs. 2,084-3-6, and they asked for no extension of time in which to pay. Accordingly this is not a case in which any application of section

(1) (1918) 3 Pat. L. J. 74.

(2) (1908-09) 13 Cal. W. N. 875.

149 of the Code of Civil Procedure is admissible The second plea also fails.

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I would accordingly dismiss this appeal with costs.

DHAVLE, J.—I agree.

Appeal dismissed.

S. A. K.

APPELLATE CRIMINAL.

Before Adami and Chatterji, JJ.

JUDAGI MALLAH

1929.

April 11, 12.

v.

KING-EMPEROR.*

Penal Code, 1860 (*Act XLV of* 1860), *sections* 86 *and* 302—*culpable homicide—intoxication, effect of, on criminal liability.*

A man who strikes another in the throat with a knife must know that the blow is so imminently dangerous that it must in all probability cause death and the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death.

Drunkenness makes no difference to the knowledge with which a man is credited and if a man knew what the natural consequences of his act were he must be presumed to have intended to cause them.

This presumption is not rebutted by evidence of drunkenness falling short of a proved incapacity in the accused to form the intent necessary to constitute the crime and merely establishing that his mind was affected by drink so that he more readily gave way to some violent passion.

*Death Reference Case no. 8 of 1929, made by F. F. Madan, Esq., I.C.S., Sessions Judge of Muzaffarpur, by his letter no. 762, dated the 12th March, 1929.