

REFERENCE UNDER THE COURT-FEES ACT, 1870.

Before Jwala Prasad, J.

KUMAR KAMAKHYA NARAIN SINGH

v.

RAMRAJ SINGH.*

1928.

Dec. 20.

Court-fees—costs, court-fee payable on cross-objection regarding—“ subject-matter in dispute ”, whether costs of the suit constitute—Court-fees Act, 1870 (Act VII of 1870), Schedule 1, Article 1.

Costs of a suit are included in the “ subject-matter in dispute ” within the meaning of Schedule 1, Article 1, Court-fees Act, 1870, and, therefore, a cross-objection relating to costs must bear an ad valorem court-fee under that article.

T. K. Rowlinson v. Lachmi Narain Jha(1), *Lakhan Singh v. Ram Kishan Das*(2), *Kewal Singh v. Markand Singh*(3), *Makki. In re*(4), and *Ma Shin v. Maung Shwe Huit*(5), followed.

Kamal Kumari Debi v. Rungpur North Bengal Bank. Limited(6), dissented from.

Durga Das Chowdhury v. Ram Nath Chowdhury(7), distinguished.

The facts of the case material to this report are stated in the order of the Court.

A. B. Mukherji, Government Pleader, for the appellants.

K. N. Verma, for the respondent.

JWALA PRASAD, J.—This is a reference under section 5 of the Court-fees Act. The question is whether a cross-objection, which relates to costs,

*In the matter of Stamp Reference in First Appeal no. 70 of 1928.

(1) (1918) 3 Pat. L. J. 443.

(4) (1896) I. L. R. 19 Mad. 350.

(2) (1918) I. L. R. 40 All. 93.

(5) (1925) 85 Ind. Cas. 257.

(3) (1909) 3 Ind. Cas. 584.

(6) (1920-21) 25 Cal. W. N. 934.

(7) (1859-61) 8 Moo. I. A. 262.

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should bear court-fee upon the amount claimed. The plaintiff's suit in the Court below has been dismissed without giving any costs to the defendants. The plaintiff has filed an appeal and the defendants have filed a cross-objection, stating that the Court below was wrong in not allowing costs to them. According to Schedule 1, article 1, a cross-objection has to bear an ad valorem court-fee according to the

“ amount or value of the subject-matter in dispute.”

The plaintiff in his plaint, among other reliefs, also claimed costs of the litigation. The defendants resisted the claim of the plaintiff and consequently the question of costs became the subject-matter of dispute in the litigation. The lower Court by its decree disallowed costs to the defendants. Accordingly, the defendants seeking to recover costs by way of an appeal are bound to pay court-fee according to Schedule 1, Article 1. This was the view taken by the Taxing Judge of this Court in *T. K. Rowlinson v. Lachmi Narain Jha*⁽¹⁾. The view seems to be supported by the practice in the Allahabad High Court, the Oudh Commissioners' Court and the Madras High Court: vide *Lakhan Singh v. Ram Kishan Das*⁽²⁾, *Kewal Singh v. Markand Singh*⁽³⁾ and *In re Makki*⁽⁴⁾. The Taxing Judge of the Calcutta High Court (Chatterjea, J.) in the case of *Kamal Kumari Debi v. Rungpur North Bengal Bank, Limited*⁽⁵⁾ took a contrary view. According to his Lordship costs of a suit could not be the “ subject-matter in dispute ” as stated in Schedule 1, Article 1 of the Court-fees Act. In support of his view the learned Judge relies upon the Privy Council decision in *Durga Das Chowdhury v. Ram Nath Chowdhury*⁽⁶⁾ where, for the purpose of determining the value of the subject-matter in suit or in appeal, for a Privy Council appeal under section 110 of the Code of Civil Procedure, it was laid down by their Lordships of the Judicial Committee that the

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amount of costs should not be taken into account. As pointed out by a Division Bench of the Rangoon High Court (Sir Sidney Robinson, C.J. and Baguley, J.) in the case of *Ma Shin v. Maung Shwe Hanit*(¹) that decision was for the limited purpose of an appeal under section 110 of the Code of Civil Procedure and does not in any way indicate that costs of a suit cannot be considered to be the "subject-matter in dispute" under Schedule 1, Article 1, of the Court-fees Act. The plain fact is that the defendants think that they are entitled to costs and that the Court below was wrong in not acting up to the principle of the costs following the event. The question of costs, therefore, is the subject-matter of dispute between the parties.

I would accordingly hold, in agreement with the view expressed by my predecessor of this Court, that the defendants should pay an ad valorem court-fee upon the amount of costs claimed by them in their cross-objection. There will be no order as to costs.

APPELLATE CIVIL.

Before Kulwant Sahay and Macpherson, JJ.

JAISRAM RAMREKH DAS

v.

GREAT INDIAN PENINSULAR RAILWAY.*

Railways Act, 1890 (Act IX of 1890), section 77—non-delivery, whether constitutes loss—suit for damages for non-delivery—notice, whether necessary.

*Appeal from Appellate Decree no. 97 of 1926, from a decision of Jyotirmoy Chatterji, Esq., District Judge of Darbhanga, dated the 9th November, 1925, reversing a decision of Babu Parmeshwari Dayal, Munsif of Darbhanga, dated the 6th May 1925.

(1) (1925) 85 Ind. Cas. 257.

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