APPELLATE CIVIL.

Before James, J.

1930.

June, 16, July, 3.

BUTTO KRISHNA RAY

v.

THE BARKAR COAL COMPANY.*

Court-fees Act, 1870 (*Act VII of* 1870), *section* 7 (*IV*) (*f*) *—suit for royalty and cess—defendant's denial of liability as regards cess—decree for cess—order for ascertainment by Commissioner—appeal by defendant against entire decree for cess—appeal, valuation of, what should be—defendant, whether entitled to put his own valuation.*

Where the liability which has been found to exist by the trial court is denied in toto, or where the liability is denied for a portion of the claim, which portion has been clearly and definitely valued in the plaint, it is not open to a defendant appealing from the decree to value his appeal otherwise than at the value which the plaintiff, as required by the provisions of section 7 (*iv*) (*f*) of the Court-fees Act, 1870, has placed upon his relief

Plaintiffs brought two suits for arrears of royalty and cesses which were claimed under a mining lease. In the plaints of both the suits the valuation of the claim for cesses was separately and definitely given as of a sum ascertained. The defendants denied that any amount of cess was due. The Subordinate Judge decided that cesses were due but left the determination of the amount to a commissioner. The defendants appealed to the High Court and denied their liability in toto.

Held, that the valuation of each appeal, whether the suits be considered to be suits for ascertained sums or for an account, should be the valuation of the claim for cesses which was given in the plaint.

Dhupati Srinivasacharlu v. *A. Perindevamma*(1), followed.

* In the matter of F. A. 2 of 1931.

(1) (1915) I. L. R. 39 Mad. 725, F. B.

Kanhaiya Lal v. *Seth Ram Sarup*(1) and *Kuldip Sahay* v. *Harihar Prasad*(2), distinguished.

This was a reference made by the Taxing Officer.

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

Abani Bhusan Mukharji and *N. N. Ray*, for the appellants.

Siveshwar Dayal, for the Crown.

B. N. Mitra and *S. N. Banarji*, for the respondents.

JAMES, J.—The two suits out of which these appeals arise were instituted for arrears of royalty and cesses which were claimed under a mining lease. In one of these suits (no. 32 of 1928) the claim for royalty was valued at Rs. 6,562 while the claim for cesses was stated to be Rs. 15,863. In suit no. 33 the claim for cesses amounted to Rs. 3,891. The plaintiffs claimed that the defendants had by their lease accepted liability for all cesses which might be payable by their landlords in respect of the property leased. They alleged that they themselves had been obliged to pay these cesses to their own superior landlord, the proprietor of the estate within which the coal mines lay. The defendants denied that under the lease they were liable to pay the cesses. They claimed in the alternative that they were not liable to pay in respect of any period preceding their own entry into possession of the property. The learned Subordinate Judge found that by their contract the defendants were liable to pay the cesses which might have been paid by the plaintiffs in respect of this land and he directed that a commission should issue in order to ascertain what was the total amount of the

(1) (1922) I. L. R. 44 All. 542.
(2) (1923) I. L. R. 3 Pat. 146.

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claim payable by the defendants, and also to ascertain what amount had been paid by the superior landlord on account of cesses, and what amount had been paid by the plaintiffs to him on account of the assessment for the property in question. The defendants have appealed from this decision, claiming that they are not liable to pay any cesses to the plaintiffs, and valuing the appeal in each instance at a thousand rupees.

Mr. Abani Bhusan Mukharji on behalf of the defendant-appellants argues that under section 7 (*iv*) (*f*) of the Court-fees Act, where the amount payable has not been definitely ascertained, the appellant is entitled to put his own valuation on the memorandum of appeal, subject to this condition only, that the valuation must not be of such a nature as manifestly to amount to a fraud on the revenue. He relies principally on the decision of the Taxing Judge of the Allahabad High Court in *Kanhaiya Lal* v. *Seth Ram Sarup*(1), wherein the defendant, who had been held liable to render accounts in a suit originally valued at eight thousand rupees, was allowed to value at two hundred rupees an appeal based on the ground that after a proper application of the Indian Limitation Act to certain portions of the plaintiff's claim, the amount found due would prove to be a trifling sum, if any. In an earlier case, *Dhupati Srinivasacharlu* v. *A. Perindevamma*(2), it had been decided by a Full Bench of the Madras High Court that in a suit governed by section 7(*iv*)(*f*) of the Court-fees Act, a defendant appealing from a preliminary decree for an account, when he appealed against the whole decree, was bound by the valuation of the plaint; but Mr. Abani Bhusan Mukharji points out that in the present cases the defendants are not appealing against the whole decree but only against so much as affects the plaintiff's claim for cesses.

(1) (1922) I. L. R. 44 All. 542.
(2) (1915) I. L. R. 39 Mad. 725, F. B.

The cases of *Kanhaiya Lal* v. *Seth Ram Sarup*(1) and *Dhupati* v. *A. Perindevamma*(2) were considered by the learned Taxing Judge of this Court in *Kuldip Sahay* v. *Harihar Prasad*(3) when Sir Jwala Prasad pointed out that the decision of the Madras High Court was in a case in which the appellant challenged the whole decree; whereas in the Allahabad case the defendant did not deny his liability to render accounts; but he admitted this and took exception only to the form of the decree, contending that there ought to have been an adjudication on the question which had been raised by him.

Mr. Siveshwar Dayal on behalf of the Crown argues that the claims disclosed by the plaints in these cases are of a dual nature. There is the claim for royalty, for which it will be necessary to take an account in order to ascertain the amount due to the plaintiffs, and secondly, there is a claim for an ascertained sum of cesses, which would be governed not by clause (*iv*) (*f*) but by clause (*l*) of section 7 of the Court-fees Act. Mr. Abani Bhusan Mukharji suggests that the larger part of the claim for cesses should be treated as barred by limitation; but it does not appear that this point was definitely raised before the learned Subordinate Judge, and I do not consider that the appellant is entitled to value his appeal on the assumption that a ground which he proposes to take in argument, which he has not even taken in his memorandum of appeal, is on the face of it likely to be successful. The position is accordingly this, that the plaintiff sued for a certain amount of money; the defendant denied that any money was due; the Subordinate Judge decided that cesses were due but left the determination of the amount to a commissioner. The defendants appeal denying their liability *in toto*. If the appellants had by their memorandum of appeal admitted any part of the plaintiffs' claim for cesses,

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the value of their appeals would have been the difference between the amounts admitted to be due and the amounts claimed by the plaintiffs. They admit nothing to be due; and the proper value of each appeal is the value of the plaintiffs' claim. The valuation of the claims which form the subject-matter of these appeals is definitely given in the plaints as of a sum ascertained, and not as a mere approximate calculation made for the purposes of applying section 7(*iv*)(*f*) of the Court-fees Act; and I consider, as I have said, that the valuation given in the plaints should be the valuation of these appeals for purposes of assessment of court-fees.

Even if it be considered that the learned Subordinate Judge has by his decrees practically converted suits for ascertained sums into suits for an account, I am of opinion that the valuation of each appeal should be the valuation of the claim for cesses which is given in the plaint. There is here no difficulty in assessing the value of the relief claimed by the appellants, such as existed in the case of *Kuldip Sahay* v. *Harihar Prasad*(1). Where the liability which has been found to exist by the trial Court is denied *in toto*, or where liability is denied for a portion of the claim, which portion has been clearly and definitely valued in the plaint, I consider that it is not open to a defendant appealing from the decree to value his appeal otherwise than at the value which the plaintiff, as required by the provisions of section 7 (*iv*)(*f*) of the Court-fees Act, has placed upon his relief, following the decision of the Full Bench of the Madras High Court in *Dhupati Srinivasacharlu* v. *A. Perindevamma*(2). I therefore consider that the appeal from the decree in suit no. 32 must be valued at Rs. 15,863 and that from the decree in suit no. 33 at Rs. 3,891; and court-fees must be paid on those valuations.

(1) (1923) I. L. R. 3 Pat. 146.
(2) (1915) I. L. R. 39 Mad. 725, F. B.