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the passing of concurrent sentences, says nothing of whipping but only imprisonment or transportation.

The proper course in such a case as the present was to sentence the accused to one whipping in lieu of any other punishment and not to pass a sentence of whipping on each charge and order that they should run concurrently. My attention was drawn to *K.E.* v. *Mi Hlwa* (1) wherein it was pointed out that where at one trial an accused is convicted of two offences it is incumbent upon the Magistrate to pass sentence upon the accused in respect of both the offences. But where a sentence of whipping is passed under section 3 of the Whipping Act it is in lieu of the punishment to which he may be liable for both of the offences. Accordingly the double sentence of whipping passed in this case is set aside and in place thereof a sentence of 20 lashes is passed in lieu of other punishment. Since the whipping has already been inflicted no further action is necessary.

COURT-FEES REFERENCE.

Before Mr. Justice Dunkley.

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Mar. 16.

Court-fees—Suit for an account—Unascertained sum—Valuation of relief by plaintiff—Valuation by defendant on appeal against preliminary decree—Final decree for ascertained sum—Appeal by defendant against final decree—Valuation—Court-fees Act (VII of 1870), ss. 7 (iv) (i), 11.

In a suit for an account, when the value of the relief sought is uncertain, the plaintiff is entitled to make his own valuation of that relief ; and the defendant against whom a preliminary decree in such suit has been passed is not bound by the valuation of the relief made in the plaint, and is at liberty to make a fresh valuation for the purpose of his appeal against such preliminary decree.

C. K. Ummar v. *C. K. Ali Ummar*, I.L.R. 9 Ran. 165, referred to.

But when the value of the relief sought has been ascertained the party who has to pay the court-fee must pay the full court-fee upon the ascertained

(1) (1934) I.L.R. 12 Ran. 419.

* Reference arising out of Civil First Appeal No. 140 of 1936 of this Court.

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amount. If the amount decreed is in excess of the amount at which the plaintiff valued the relief sought, he cannot execute his decree without paying the difference of the court-fee. Similarly if a defendant against whom a final decree for a specific sum of money has been passed in a suit for an account wishes to appeal in respect of the sum decreed against him, the valuation of the appeal for the purpose of court-fees is this amount, and the appellant has no option but to accept this valuation and, under s. 7 (iv) (*f*) of the Court-fees Act, to state it as the amount at which he values the relief sought.

Kantichandra v. *Sarkar*, I.L.R. 57 Cal. 463 ; *Nianati Bai* v. *Daulat Ram*, I.L.R. 14 Lah. 738, referred to.

A. N. Basu for the appellant.

DUNKLEY, J.—This is a reference by the Taxing Master, under the provisions of section 5 of the Court-fees Act. It arises out of an appeal which has been brought before this Court by the defendant in the original suit, which was heard and decided by the Assistant District Court of Mandalay. The original suit was a suit for dissolution of partnership and accounts. The plaintiff valued the relief sought in the suit at Rs. 7,761-7-3, and valued the suit for jurisdiction at the same figure. She paid court-fees *ad valorem* on this amount. A preliminary decree for the taking of accounts was passed on the 5th September, 1934. No appeal therefrom was preferred. The final decree was passed on the 1st June, 1936. It declared that there was due by the defendant to the plaintiff a sum of Rs. 3,915-3-6. The appeal of the defendant-appellant is against this final decree. The memorandum of appeal states that the appeal is valued at Rs. 300, "tentatively," for the purpose of court fees, under section 7 (iv) (*f*) of the Court-fees Act, and at Rs. 3,915-3-6 for the purpose of jurisdiction.

Under the provisions of section 8 of the Suits Valuation Act, in a suit of this description the valuation for the purpose of court-fees and the valuation for the purpose of jurisdiction must be the same, and, consequently, the fact that the defendant-appellant has found himself

compelled to value his appeal for the purpose of jurisdiction at Rs. 3,915-3-6 amounts almost to a tacit admission that this is the correct valuation for the purpose of court-fees also.

The appellant relies mainly on a judgment of a Full Bench of this Court in the case of *C. K. Ummar* v. *C. K. Ali Ummar* (1), where it was held that in a suit for accounts under clause (iv) (*f*) of section 7 of the Court-fees Act the plaintiff in the trial Court, and the appellant in the Court of appeal, is the person to make an estimate of the value of the relief that is claimed, and this valuation cannot be called in question or revised by the Court. The question which was propounded for the decision of the Full Bench was as follows :

"Whether in a suit coming under clause (iv) (*f*) of section 7 of the Court-Fees Act, when the plaintiff has valued the relief prayed for and the trial Court has amended that valuation under the provisions of section 12 of the said Act, and the plaintiff has obtained a preliminary decree for accounts and the defendant appeals against the whole decree the defendant is bound by the valuation of the plaint in the trial Court or is at liberty to make a fresh valuation for the purpose of the appeal."

Consequently, this case refers only to an appeal against a preliminary decree. Mr. Basu, for the appellant, has quoted several authorities in which it has been held that, in an appeal against a preliminary decree in a suit for the taking of accounts, the defendant-appellant is not bound by the valuation of the relief made in the plaint and is at liberty to make a fresh valuation for the purposes of the appeal. This is, no doubt, settled law, but it is not the point which is now before me, as the present appeal is an appeal against a final decree, by which it has been decided that a certain specific sum of money is due by the defendant-appellant to the

(1) (1931) I.L.R. 9 Ran. 165.

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plaintiff-respondent. The decision of their Lordships of the Privy Council in the case of *Faizullah Khan* v. *Mauladad Khan* (1), to which reference has been made, does not render assistance in the elucidation of the point which is now for decision, for in that case the appellant paid the court-fee *ad valorem* on the whole amount which had been decreed against him.

The argument of Mr. Basu, on behalf of the appellant, is that there is no distinction and can be no distinction, so far as court-fees are concerned, between a final decree and a preliminary decree, as section 7 (iv) (*f*) of the Court-fees Act refers generally to suits and appeals and makes no distinction between an appeal against a preliminary decree and an appeal against a final decree, but it appears to me that the provisions of section 11 of the Court-fees Act are against this contention. This section lays down that in a suit for an account, if the amount decreed is in excess of the amount at which the plaintiff valued the relief sought, the decree shall not be executed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole amount so decreed shall have been paid to the proper officer. It is, therefore, clear that it is the intention of the Legislature that in suits for an account, although at the commencement of the litigation, when the value of the relief sought is uncertain, the plaintiff shall have the privilege of making his own valuation of that relief, yet he shall not obtain the relief to which he is declared to be entitled by the decree until the whole of the court-fee thereon has been duly paid ; and consequently, that in such suits, as soon as the value of the relief sought is rendered certain, then court-fee must be paid upon that amount. The principle of that section appears to

(1) (1929) 56 I.A. 232.

me to be equally applicable to an appeal as to a suit, and the principle is that when the value of the relief sought has been ascertained the uncertainty vanishes, and the party who has to pay the court-fee must pay the full court-fee upon the ascertained amount.

The provisions of section 7 (iv) (*f*) of the Court-fees Act are as follows :

> " In a suit for accounts,—
> according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.
> In all such suits the plaintiff (in this case, the appellant) shall state the amount at which he values the relief sought."

I agree that this section is applicable to an appeal against a decree in a suit for an account, and that under the provisions of the section it is for the appellant to value the relief sought by him. If the value is uncertain he can make his own estimate ; but when the value is made certain, as it is by the final decree, the necessity for an estimate does not arise, and it would be manifestly absurd to allow the appellant to make an arbitrary and erroneous valuation when the real value is known.

There is a decree against the appellant for a specific sum of money, and the appellant seeks to have this decree wholly set aside. He seeks to get rid of a decree against himself for a specified sum of money, and that sum is plainly the value of the relief sought. The valuation of the appeal for the purpose of court-fees is, therefore, this amount, and the appellant has no option but to accept this valuation and, under section 7 (iv) (*f*) of the Act, to state it as the amount at which he values the relief sought. Section 7 (iv) (*f*) says that the plaintiff or appellant shall state the amount at which he values the relief sought. This does not mean that he shall be permitted to state any fanciful amount

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which may occur to his mind; it means that the appellant, or, in the case of a suit, the plaintiff, shall *truly* state the value of the relief sought by him, to the best of his knowledge and belief. He cannot put a fictitious value upon his suit or appeal when the relief sought is capable of exact valuation. This principle has been laid down by Rankin C.J. in the case of *Kantichandra Tarafdar* v. *Radharaman Sarkar* (1), where it was decided that in a suit for an account the defendant appealing against the final decree must value his appeal according to that decree. The decision of Bhide J. in *Mussammat Niamati Bai* v. *Daulat Ram* (2) is to the same effect. Neither of these decisions is affected by the decision of the Judicial Committee in *Faizullah Khan* v. *Mauladad Khan* (3), and, in fact, the Lahore case was decided subsequent to the publication of this decision and reference to it was made by Bhide J. in the course of his judgment.

I am clearly of opinion that in this case, although section 7 (iv) (*f*) of the Court-fees Act is applicable and it is the duty of the appellant to value the relief sought, the only valuation which he can be permitted to put upon that relief is the amount of the decree which he seeks to have set aside, namely, Rs. 3,915-3-6.

The decision of the learned Taxing Master is therefore correct, and court-fee *ad valorem* on this amount must be paid on the memorandum of appeal.

(1) (1929) I.L.R. 57 Cal. 463. (2) (1933) I.L.R. 14 Lah. 738.
(3) (1929) 56 I.A. 232.