

## COURT FEES ACT REFERENCE.

Before Mr. Justice Dunkley.

MARIAM BIBI AND ANOTHER

v.

C. E. MALIM AND ANOTHER.\*

1938

Dec. 9.

*Court-fees Act, ss 4, 6, 7 ; sch. I, art. 1—Imposition of liability—Schedules and charging sections—“Amount or value of the subject-matter in dispute” in reference to cross objection—Award of special costs in any event in administration suit—Cross objections on findings in suit and on special costs.*

The Schedules of the Court Fees Act, read with ss. 4 and 6 of the Act impose the liability for fees. S. 7 refers only to suits and, in certain cases specifically mentioned, memoranda of appeal.

*Nepal Rai v. Devi Prasad*, I.L.R. 27 All. 447 ; *Reference under Court Fees Act*, I.L.R. 29 Mad. 367, referred to.

The words “amount or value of the subject-matter in dispute” in art. 1, Sch. I of the Court Fees Act, mean, in reference to a cross objection, the subject-matter in dispute in the cross objection and not the subject-matter in dispute in the suit on appeal.

*Ma Shin v. Maung Shwe Hnit*, I.L.R. 2 Ran. 637, referred to.

By the preliminary decree in an administration suit the respondents were ordered to pay to the appellants a certain sum as special costs in any event, the ordinary costs being ordered to abide the passing of the final decree. The respondents filed cross-objections, four grounds of which related to the findings in the suit and the remaining three to the special costs.

*Held* that the cross objection, so far as it related to the special costs, was chargeable with an *ad-valorem* court fee on the amount of the special costs.

*Clark* (with him *P. B. Sen*) for the respondents. The cross-objections filed by the respondents as regards costs need not be stamped *ad valorem*. These costs were awarded as special costs on account of the intricate nature of the case and it is quite possible that if on the taking of accounts it is found that nothing is due to the plaintiff-appellants the decree for costs would enure to the benefit of the respondents. As the plaintiffs have appealed the cross-objection as to costs had to be taken.

\* Reference arising out of Civil 1st Appeal No. 144 of 1937 of this Court.

The Taxing Master has held that the cross-objections relate to two distinct matters, and therefore they should be separately stamped. The Court Fees Act is a taxing statute and the only section which provides for two distinct matters is s. 17 ; but this section is confined to suits and does not relate to cross-objections.

The observations in *Ma Shin v. Maung Shwe Hnit and one* (1) do not apply to this case because that decision related solely to costs. Costs as such are not the subject-matter of any suit, and no court fee is generally payable thereon. See *Doorga Das Choudhury v. Romanath Choudhury* (2). Even without raising a specific cross-objection on the point the respondents could have argued it on appeal.

*Kamakhaya Narain Singh v. Ramraj Singh* (3) is distinguishable because the appeal in that case related to costs alone, and in *T. K. Rawlins v. Lachmi Narain* (4) no reasons are given for the decision.

It is not the Schedule to the Court Fees Act that imposes the liability under the Act, but s. 7 ; the Schedule merely helps to measure that liability. This is a suit for accounts and is therefore properly valued under s. 7 (iv) (f). Moreover as costs awarded in a case generally include the court fee paid it is wrong to say that a court fee on a court fee is leviable.

*Kamal Kamini Debi v. Rangpore North Bengal Bank, Ltd.* (5) merely explains the practice in Calcutta. *In re Makkhi* (6) is a decision in two lines and contains no reasoning.

*Thein Maung* (Advocate-General) for the Crown. Two paragraphs of the cross-objections deal expressly with the special costs awarded, and the intention underlying it is apparent. Even if the cross-objection

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(1) I.L.R. 2 Ran. 637.

(2) 8 M.I.A. 262.

(3) I.L.R. 8 Pat. 543.

(4) 3 Pat. L.J. 443.

(5) 25 C.W.N. 934.

(6) I.L.R. 19 Mad. 350.

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as to the merits of the case fail the respondents would have the right to object to the costs awarded. The order for costs is separately attacked on its own merits.

It is not s. 7 of the Court Fees Act that imposes the liability but sections 4 and 6 read with the Schedule to the Act.

Art. 1, Sch. II uses the words "value or subject-matter" and part of the subject-matter in the present case relates to costs. Costs would not be the subject-matter of a suit, but it may in some cases become so in the appellate Court. The ruling in *Ma Shin v. Maung Shwe Hnit* really applies to this case. The Madras decision, though in two lines is very apposite and explains the position in terse language. The case is also covered by *T. K. Rawlins v. Lachmi Narain* and *Chiranji Lal v. Balchand* (1).

DUNKLEY, J.—The question referred to me for decision, under the provisions of section 5 of the Court Fees Act, arises out of a cross-objection which has been filed by the respondents in Civil First Appeal No. 144 of 1937. The suit out of which this appeal arises was a suit for the administration of the estate of a deceased person and accounts. By the preliminary decree the respondents (who were the defendants) have been ordered to pay to the appellants (who were the plaintiffs) a sum of Rs. 2,380 as special costs in any event, the ordinary costs being ordered to abide the passing of the final decree.

The cross-objection contains seven grounds. The first four grounds relate to the findings in the suit. The remaining three grounds relate to the order that the respondents shall in any event pay this amount of special costs to the appellants.

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(1) I.L.R. 52 All. 1020.

The Taxing Master has held that the cross-objection, so far as it relates to these special costs, is chargeable with Court-fees *ad valorem* on the amount of the costs, *viz.*, Rs. 2,380, under Article 1 of Schedule I of the Court-fees Act; but at the request of the respondents he has made a reference under section 5 of the Act.

The argument which has been advanced on behalf of the respondents is that Schedule I of the Court-fees Act does not impose any liability and that it must be read in relation to section 7 by which the liability is imposed, that is, that section 7 is the charging section and Article 1 of Schedule I is merely auxiliary to that section. I am unable to accede to this argument, because, in my opinion, it is clear that the Schedules to the Act, when read with sections 4 and 6 of the Act, do impose a liability. Section 7 refers only to suits and, in certain cases specifically mentioned, memoranda of appeal. The fees chargeable in respect of all other documents are those laid down in the Schedules to the Act, liability being imposed by the Schedules read with section 4 or section 6, as the case may be. See on this point *Nepal Rai and others v. Devi Prasad and others* (1) and *Reference under Court Fees Act, 1870* (2).

Now, the only place in the Court-fees Act where cross-objections are mentioned is Article 1 of Schedule I. The first column of this article reads as follows :

"1. Plaint, written statement pleading a set-off or counter-claim, or memorandum of appeal (not otherwise provided for in this Act) or of cross-objection presented to any Civil or Revenue Court except those mentioned in section 3."

and the second column reads,

"When the amount or value of the subject-matter in dispute \* \* "

(1) (1905) I.L.R. 27 All. 447, 449.

(2) (1905) I.L.R. 29 Mad. 367, 369.

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Consequently, it is clear that a cross-objection must be chargeable with a Court-fee calculated *ad valorem* on the amount of "the subject-matter in dispute."

With the greatest respect, I agree with the observations of Robinson C.J. in *Ma Shin v. Maung Shwe Hnit and one* (1), where he says :

"In my opinion, it is wrong to assume that the words 'amount or value of the subject matter in dispute' mean, in reference to a cross-objection, 'the amount or value of the subject-matter in dispute in the suit.'"

In my view, "the subject-matter in dispute" means the subject-matter in dispute in the cross-objection. The subject-matter in dispute in this cross-objection is clearly whether the special costs awarded are to be payable by the respondents to the appellants in any event. The appellants expect to be paid these special costs irrespective of the final result of the suit. The respondents, on the other hand, hold that these special costs should abide by the final decree in the suit. Hence, so far as the grounds raised in the last three paragraphs of the cross-objection are concerned, a Court-fee calculated *ad valorem* under Article 1, Schedule I, is payable by the respondents on the amount of the special costs, *viz.*, Rs. 2,380.