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tion 5 of the Act. But no presumption arises under section 7 that the place was "kept" by any person as a common gaming house.

In order to establish an offence under section 4 of keeping a common gaming house, it is necessary to show, in the first place, that the person charged with that offence is the owner, or occupier, or a person "having the use" of the place alleged to be kept as a common gaming house.

It is not sufficient to show that either of the accused used the place in question for the purpose of gaming there.

The conviction under section 4 of the Act must, therefore, be set aside.

As to punishments, there being nothing to show that the place where the petitioners were gaming was a resort of disorderly persons, or was otherwise a nuisance, the sentences appear to us to be unduly severe and we set aside the unexpired portion of the sentence of two months' rigorous imprisonment passed on accused No. 1 and reduce the fine in the case of accused No. 2 to Rs. 15, the balance, if paid, to be returned to accused 2.

R. R.

APPELLATE CIVIL.

Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Aston.

BAI MEHERBAI (ORIGINAL PLAINTIFF), APPELLANT, *v.* MAGANCHAND MOTIJI (ORIGINAL DEFENDANT), RESPONDENT.*

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Bombay Regulation II of 1827, section 52—Vakil's fee—Calculation according to the actual value of the property in suit.

A vakil's fee should be calculated on the amount of the actual value of the property, the subject-matter of the suit, and not on the amount of the claim as estimated for the purposes of the payment of Court-fees.

PER JENKINS, C.J. :—"The principle and rule of taxation ought (in our opinion) as far as possible to be such as to secure that the successful party should recover from his opponent such costs as are necessary to enable him to place his case properly before the Court, and this can best be secured by adopting the actual value as the basis of taxation."

The real as well as the Court-fee value should be stated on every plaint and memorandum of appeal, and in case of dispute an issue should be raised as to the real value.

* Appeal No. 26 of 1904.

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BAI MEHER-BAI v. MAGAN-CHAND.

FIRST APPEAL from the decision of Chimanlal Lallubhai, First Class Subordinate Judge of Surat, in suit No. 222 of 1901.

Objection to the taxation of bill of costs in connection with the vakil's fee.

The plaintiff sued to set aside a sale-deed and for a declaration that it was null and void and for the recovery of possession of the property comprised in it. The property was admittedly worth more than Rs. 5,000 but for the purposes of the Court-fees the suit was valued at Rs. 640.

The defendant contended that the deed was valid and binding on the plaintiff.

The Subordinate Judge dismissed the suit.

The plaintiff having preferred an appeal, the respondent's (defendant's) pleader raised a preliminary objection urging that as the suit was valued at Rs. 640 the appeal lay to the District Court and not to the High Court. The Court over-ruled the objection on the ground that as the value of the subject-matter of the suit was over Rs. 5,000 the High Court had jurisdiction to entertain the appeal.[1] After hearing arguments on the merits the High Court confirmed the decree. On the bill of costs being framed by the Registrar's office, the respondent's pleader contended that the vakil's fee should be calculated in proportion to the value of the subject-matter of the suit and not according to the valuation given in the memorandum of appeal for the purposes of the Court-fees. The taxing officer was of opinion that the vakil's fees should be charged on the value of the claim as given in the memorandum of appeal. The respondent's pleader therefore applied to the Court under Rule 59[2] of the High Court Rules, 1901. The taxing officer was, thereupon, asked to furnish information on the point to the Court and he, in a note, supported

(1) See *ante* p. 90.

(2) Rule 59 of the High Court Rules, 1901 :—

59. The bills of costs to be attached to the decrees or orders of the Court shall be prepared in the Registrar's office. In cases where any doubt exists as to the principle on which the bill is to be prepared, the taxing officer shall, after hearing (if necessary) the parties or their pleaders, decide the matter. If any party dissatisfied with the decision informs the taxing officer that he proposes to apply to the Court on the subject, the decree shall be detained in the office for 15 days from the date of the decision to give time for the application. If the application be not made within such time, the decree shall be issued.

his opinion by reference to section 52 of Regulation II of 1827, the several precedents and the practice prevailing in the Court.

Manubhai Nanabhai appeared for the respondent (defendant) in support of his contention :—The construction put by the taxing officer on section 52 of Regulation II of 1827 is erroneous. He has further relied on the long established practice prevailing in this Court, but the question has never been argued and decided.

We submit that the expression "amount sued for" in section 52 of the Regulation should be construed as including the amount of a money claim as also the value of the property in suit. See Appendices H and L to Regulation II of 1827 ; section 3, clause 1st of Regulation IV of 1827 ; section 16, clause 2nd and Appendix C of Regulation XVIII of 1827 ; section 19 of Regulation VII of 1828 ; section 1 of Regulation VI of 1830 ; section 3, clause 1st of Regulation VII of 1831. The expression equivalent to "amount sued for" used in these enactments, namely, "amount or value," "value in money," "sum or value," "amount at issue in property or damages", &c., indicate the sense in which the Legislature had used the expression in question. The intention is quite manifest from the expressions used in Regulations IV and XVIII of 1827.

[JENKINS, C. J. :—How can you infer the intention of the Legislature by the aid of later enactments ?]

We submit that Regulations IV and XVIII of 1827 are not later enactments. They are parts of one code of twenty-six Regulations enacted and put in force at one time—see Regulation XXVIII of 1827.

The analogous expression in English Rules is "money or money worth." The word "value" means the real or actual value. Any test subsequently laid down for assessing Court-fees can have no application. The valuation for the purposes of Court-fees is based on rules adopted for fiscal purposes. Such valuation can have no reference to the actual value of the property in suit, *Aukhil Chunder Sen Roy* v. *Mohiny Mohun Dass* [1] ; *Nanhoon*

(1) (1879) 5 Cal. 489 at p. 493.

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Singh v. *Tofanee Singh*[1]; *Jeebraj Singh* v. *Inderjeet Mahton*[2]; *Bai Mahkor* v. *Bulakhi*[3]; *Dayachand* v. *Hemchand*.[4]

Manmukhram K. Mehta appeared for the appellant (plaintiff) *contra* :—There is a long established practice to assess vakil's fee according to the value as given in the plaint. The practice should not now be disturbed after so many years. Section 52 of Regulation II of 1827 is not applicable to a case like the present, because suits for land were not then cognizable by a Civil Court—see Act XVI of 1838. The cases relied on were decided before the passing of the Suits' Valuation Act (VII of 1887).

Manubhai, in reply :—The long continuance of a practice cannot make it legal. Suits for immoveable property are expressly mentioned in section 21 of Regulation II of 1827. Section 8 of the Suits' Valuation Act (VII of 1887) has been held not to apply to a case like the present.

JENKINS, C. J. :—Section 52 of Regulation II of 1827 provides that each pleader in prosecuting or defending an original suit shall be entitled to a percentage on the amount sued for according to the rates specified in Appendix L, as a remuneration for his trouble in acting on behalf of his client, until the decree in the suit is passed, and thereafter until such decree is fulfilled.

The question for our determination is how the amount sued for is to be estimated in this case: whether on the actual value of the property in dispute, or on the value in respect of which Court-fee was paid.

The taxing master accepted the last of these values as the true basis of remuneration, and there can be no doubt that in so doing he followed a long established practice.

We have now been furnished by Mr. Tilak, the Assistant Registrar, with an able and exhaustive note tracing the origin and history of the present practice, and from it we find that the matter never has been the subject of actual judicial decision, so that it is open to us to consider the soundness of that practice.

(1) (1873) 12 Beng. L.R. 113 at pp. 117, 118.
(2) (1872) 18 W. R. (Civ. Rul.) 109; S. C. 12 Ben. L. R. 115 Note.
(3) (1874) 1 Bom. 538 at p. 541.
(4) (1880) 4 Bom. 515 at p. 526.

The words of the Regulation point to the actual value as the basis of remuneration, while the Court-fee value in suits of this class may bear no relation to the actual value. This is illustrated by the present suit which is valued for the purposes of Court-fee at Rs. 640; yet when objection was taken on that score to the competency of an appeal to this Court, it was successfully met with the answer that the true value of the property was in excess of Rs. 5,000. Nor do we think that on the ground of justice or convenience there is anything to be said in favour of the Court-fee value rather than the actual value as a basis of taxation: on the contrary there is much to be said against it.

The principle and rule of taxation ought (in our opinion) as far as possible to be such as to secure that the successful party should recover from his opponent such costs as are necessary to enable him to place his case properly before the Court, and this can best be secured by adopting the actual value as the basis of taxation. This too is illustrated by the present case; for on the basis of the Court-fee value all that the successful party can recover in respect of his pleader's fee on the appeal to this Court is Rs. 19-3-2, though the value of the subject-matter is over Rs. 5,000. This remuneration is wholly inadequate and the only result is that the successful litigant has to pay out of his own pocket the difference which goes to make up his pleader's proper reward. In view of this conclusion it will in future be right for the real as well as the Court-fee value to be stated on every plaint and memorandum of appeal, and, in case of dispute, for an issue to be raised as to the real value. Though this has not been done in the present case, no difficulty arises, as according to the plaintiff's own contention the real value may be taken to be Rs. 5,000 and the objection to the taxing master's decision will accordingly be allowed.

G. B. R. *Order accordingly.*