Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Bibi Phul Kumari v. Ghanshyam Misra and another, from the High Court of Judicature at Fort William in Bengal; delivered the 19*th November* 1907.

Present at the Hearing:

LORD ROBERTSON.
LORD COLLINS.
SIR ARTHUR WILSON.

[*Delivered by Lord Robertson.*]

The sole question in this Appeal is what is the proper court fee payable on the plaint in the suit. The Act governing the question is the Court Fees Act (VII of 1870). Proceeding on the theory that what was due was Rs. 20, the Appellant stamped her plaint accordingly; her suit was dismissed in the Court of first instance on the ground that her plaint was insufficiently stamped; and this judgment was affirmed by the High Court of Bengal in the judgment now appealed against. The present Appeal has been heard *ex parte*.

For the right determination of the question at issue it is necessary to ascertain what are the object and the nature of the suit. Now, fortunately, this is not dubious. The Plaintiff succinctly and accurately states that the cause of action accrued on 24th April 1899, that being the date of a judgment pronounced against her in the Court of the Subordinate Judge of Purneah in certain execution proceedings. What had taken her into that Court was this: she had bought a property from the second Respondent and had taken possession and was

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registered as proprietor. After and notwithstanding this, the first Respondent, purporting to be a creditor of the second Respondent under a decree for Rs. 62,022 attached the property and advertised it for sale. The Appellant lodged with the Subordinate Judge of Purneah, before whom the execution proceedings took place, a claim to the property claiming that her right should be declared and that an injunction should issue against the execution of the decree held by the first Respondent. This claim was rejected by the Subordinate Judge on 24th April 1899, and his decree is the cause of action in the suit which gives rise to this Appeal.

Now the right of the Appellant to sue for the establishment of her right, which the Subordinate Judge had negatived, rests on the 283rd section of the Civil Procedure Code (XIV of 1882).

> "The party against whom an order under section 280, 281, or 282 is passed may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, the order shall be conclusive."

This is clear of itself, and the High Court, in the judgment appealed against, describes the suit as "of the nature referred to in section 283."

Having thus ascertained what is the nature of the suit, their Lordships turn to the Court Fees Act to see whether such actions of appeal are specifically dealt with; for it is only if they are not specifically dealt with that the task arises of finding to which group of cases this is to be assigned. Now, the 17th Article of Schedule II. is expressly made to apply to "Plaint or Memo-" randum of Appeal in each of the following suits":

> "1. To alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent, or of any Revenue Court."

Now this is an exact description of the effect of the Appellant's suit. It is true that, instead of asking the Court to alter or set aside the decree which is the cause of action, she categorically asks from the Court the several decrees which she had asked from the Subordinate Judge, and which the Subordinate Judge had refused. But this is merely a verbal or formal difference, and section 283 of the Civil Procedure Code, under which section the action is brought, recognizes such a suit as not merely an appropriate, but the only mode of obtaining review in such cases.

Their Lordships are accordingly of opinion that the first head of Article 17 of Schedule II. applies to the case. This view is opposed not only to that of the Respondents and of the High Court, but to that of the Appellant. Misled by the form of the action directed by section 283, both parties have treated the action as if it were not simply a form of appeal, but as if it were unrelated to any decree forming the cause of action. Accordingly, on the one hand, the Appellant, pointing to her prayer for a declaration, says she pays Rs. 10 on that, and, pointing to her prayer for injunction, says she pays other Rs. 10 on that. In their Lordships' judgment, this is not the proper view of the suit taken as a whole; but, if it were, it would be extremely difficult for the Appellant to bring her suit, which asks consequential relief as well as a declaratory decree, within the enactment which she invokes.

On the other hand, the Respondents equally ignore the essential fact that this is a plaint for review of a summary decision; and they go on to bring the action, treated as an original action, within the class of cases where the court fees are *ad valorem* of the action. It is not necessary to discuss this in detail; but their Lordships are not satisfied that, even if the value of the action determined the fee, the Respondents have rightly

ascertained the value. What they have done is simply to take the sum in the execution decree. This is plainly a fallacious proceeding. The value of the action must mean the value to the Plaintiff. But the value of the property might quite well be Rs. 1,000, while the execution debt was Rs. 10,000. It is only if the execution debt is less than the value of the property that its amount affects the value of the suit.

Their Lordships, however, are satisfied that there is in the statute no general or overriding reference to value. The terms of sub-section 1 of Article 17 (which they hold to apply) contains no reference to value. In like manner the class of suits dealing with arbitration awards is coupled with suits such as that immediately in question; awards may be of value Rs. 10 or of value Rs. 100,000; and yet no distinction is made. In short, the statute, for good reasons or bad, has dealt with certain actions irrespective of value; and the present action is one of them.

This being a matter of practice, although to be determined by statute, their Lordships would willingly have given much weight to any consentaneous practice. But while the Respondents can claim to be supported by decisions of the Calcutta and Allahabad High Courts, there is a contrary decision in the Bombay High Court (*Dhondo Sakharam Kulkarni* v. *Govind Babaji Kulkarni*, I.L.R. 9 Bombay, 20) which has the high authority of Sir Charles Sargent, whose judgment is in accordance with the conclusion at which their Lordships have arrived.

It is a singular fact that while the *ratio* of the Appellant's case is at variance with that which their Lordships adopt, there is only a difference of Rs. 10 in the practical result,—the Appellant having maintained that she was liable for Rs. 20, while she was truly liable only for Rs. 10. On the other hand, the sum

held due in India was Rs. 1,320, and this was the result of the *ad valorem* theory. It is to be observed that the Appellant did not, as she should have done, stand on the first clause of the 17th Article of Schedule II., but, on the contrary, contributed to mislead the Courts, by advancing a theory which was as unsound as that of the Respondents. Their Lordships think that, in these circumstances, the justice of the case is met by the first Respondent (who alone appeared in the Suit) paying half of the Appellant's costs in the High Court and in England.

Their Lordships will therefore humbly advise His Majesty that the Appeal ought to allowed, that the decrees of the High Court and the Court of the Subordinate Judge ought to be discharged, that the case ought to be remitted to the High Court with a view to the necessary steps being taken to dispose of the remaining issues reserved by the Subordinate Judge for future consideration, that the first Respondent ought to pay half the Appellant's costs in the High Court, and that the costs in the Court of the Subordinate Judge ought to be dealt with by the Subordinate Judge after the other issues have been disposed of.

The first Respondent will pay half the Appellant's costs of this Appeal.

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