Report on the Levy of
ees

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REPORT ON THE LEVY OF COURT-FEES.

PART I—PRELIMINARY.

Chapter I—Introductory.

In G.O. No. 1904, Miscellaneous, dated the 10th April 1938, Government accepting the view of the High Court that the Court-Fees Act is full of defects and anomalies, and the suggestion that the only satisfactory remedy is to recast the entire Act, appointed a Special Officer to examine the whole question and submit a report formulating precise recommendations.

2. The Court-Fees Act was enacted nearly seventy years ago and there has been no systematic revision thereof as yet. At best there has been only patch work amendments to suit the exigencies of the occasion or to increase the revenue. The result is that the Act is full of defects and imperfections. Time and anon, judges and text-book writers have criticised various provisions of the Act and have suggested the necessity of the intervention of the Legislature to remove the anomalies existing in the Act and the difficulties in the interpretation of the various sections of the Act.[1] Forty-eight years ago [2]Mr. Justice Mahmud sitting in a Full Bench of the High Court of Allahabad remarked that "the Court-Fees Act may well be amended *soon* and remarked that the Act as it is, is not in the interest of justice but makes the administration of justice difficult and in many cases impossible." And quite recently similar remarks were made by our High Court and it was recommended that "the Legislature should place in the statute book an enactment which will be a sure and certain guide both to the public and to the courts in the matter of court-fee.[3]"

3. The wording of the Act is in several cases obscure and difficult to interpret This has resulted in a multitude of conflicting decisions in the several High Courts and even in the same High Court. This uncertainty of the law could have been set right only by the intervention of the legislature. Lord Macaulay has observed with reference to codification in British India that "important questions about which courts of the highest rank have pronounced opposite decisions, ought to be settled without delay and no point of law ought to continue to be a doubtful point for more than three or four years after it has been mooted in a court of justice."[4]

4. The defects of the Act are so numerous that it will be like flogging a dead horse to direct detailed criticism against it.[5] While every other branch of statute law, substantive and processual, has progressed, an unhealthy stagnation is noticeable in the Court-Fees Act which, while it has not kept pace with the other branches of law, has still been amended piecemeal so that there is lack of harmony or uniformity in its provisions that provoked the criticism of one learned Judge of this High Court, that it looked "like a mosaic of broken tea cups."[6] "Re-enactments of the various codifying Acts are as necessary as repairs to a railway. No Act of any importance ought to last more than ten or twelve years. At the end of that time it should be carefully examined from end to end and whilst as much as possible of its general frame work and arrangement are retained, it should be improved and corrected at every point which experience has shown that it required improvement and correction."[7] Thus it becomes necessary to have a thorough investigation of the whole question with a view to simplify the Act and make the levy of court-fees rest on a logical and equitable basis.

5. Though there is a general demand that court-fees should be reduced, there is also the fact that quite inadequate fee is collected in sundry cases and the imperfections of the Act facilitate in some cases an unscrupulous litigant to escape the payment of a just fee. There are again several instances where the levy is comparatively light and inadequate for which there is hardly any justification. Consequently a comprehensive study of the whole question to afford relief where it is due and increase the fee where it is unduly light and so adjust the incidence of the fee on a just and equitable basis is a necessary reform.

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[1] To quote only a few—Vide 1931 A.I.R. (M.) 457; 4 Pat. 336; 4 B. 515; 2 B. 218; 47 All. 762; 12 B 98; 24 C. 173; 2 B.L.R. 235; 9 Lah. 563; 18 C.L.J. 308; 39 C.W.N. 131; 71 M.L.J. 677; 1929 A.I.R. All. 571; 12 A 129; 1938 M.W.N. 520; 13 All. 74.

[2] 12 All. 129.

[3] 1938 M.W.N. 520.

[4] Quoted in 1933 M.W.N. (J.) 53.

[5] Mr. Satyamurti Iyer's introduction to the Court-Fees Act.

[6] The Hon'ble Mr. Justice Jackson.

[7] Sir James Stephen quoted in 1933 M.W.N. (J) 55.

Chapter II—Nature of Court-fee.

6. If the levy of court-fees is to rest on a logical basis, it is necessary at the outset to determine the exact nature thereof. Is it a tax on litigation as the income-tax or the professional tax, or a fee for services rendered to litigants by courts in investigating their claims, or is it simply an impediment placed on the path of a litigant to discourage reckless or vexatious litigation ? It is obvious that the position should be clarified before any logical or equitable scheme for the levy of court-fee could be devised. When an institution fee in the case of civil suits was first levied by the Bengal Regulation 38 of 1795, it was not as a source of revenue but as set out in the preamble thereto, to prevent vexatious litigation. It was recognized from the earliest times that it is the duty of the State to discourage speculative litigation. In Ancient Rome[8] the claimant used to stake a sum of money called "*sacramentum*" on the justice of his own cause and the defendant to accept the wager. In ancient Hindu Law, the Smriti writers[9] laid down stringent rules to put down vexatious litigation. A person making a false claim before a court of justice is to discharge *twice* the amount of his claim. A person who denied a proper claim should pay the amount payable to the plaintiff and the King an equivalent as mulct. The method adopted was the infliction of a fine[10] on the party who had unnecessarily or wantonly set the law in motion by bringing a false claim or denied a just one. These provisions were not fiscal measures to secure revenue or fees for services rendered but were penal provisions for the punishment of wrongdoers.[11] The Hindu law books lay down that if on account of the great wealth of the usurper, a suit is necessitated, and if his arrogance would not be subdued by the payment of a fine equal to the claim as is generally collected from a defeated party, he is to be amerced according to his ability and must be made to pay *so much as is sufficient to subdue his arrogance*. Thus the ancient law-givers achieved the object of checking vexatious litigation, by the imposition of a fine modulated to suit the circumstances of each case and the status of the wrongdoer. And it was inflicted after the termination of the litigation after ascertaining who the wrongdoer was. It is obvious that the present levy of court-fee initially from the party instituting any proceedings in a court of law before ascertainment of the truth or falsity of his claim cannot be construed to be merely a method adopted to check vexatious litigation.

7. This view was clearly indicated by Government when within two years of Bengal Regulation 38 of 1795 above referred to, they enacted Regulation 6 of 1797 which superseded it, and set out in its preamble that the institution fees were levied with the *dual* object of preventing vexatious litigation *and increasing public revenue*. Shortly thereafter, Regulation I of 1814 was passed and therein the *only* object for the levy of court-fee was stated to be augmentation of public revenue. The object of checking vexatious litigation dropped out of the preamble altogether. Then, the preamble itself disappeared which provoked the criticism of Mahmud J. "that it was thought *convenient* not to have a preamble."[12] It may well, however, be doubted whether the omission of the preamble was deliberate and merits the scathing criticism of that learned Judge. Whatever obscurity might have been occasioned by the absence of a preamble, it could hardly be considered that it was the design of Government to gully the public and levy a fee without disclosing its purpose. In fact Justice Mahmud himself expressed only a doubt whether the Act was intended to regulate questions of procedure or regulate the method of collection of revenue.[13] There is also a pronouncement of the highest Judicial Tribunal, the Judicial Committee of the Privy Council that the paramount object of the Court-Fees Act is to secure revenue for the benefit of the State.[14] It may therefore be observed with due deference to that eminent Judge, that the object of the Act is in fact not so obscure as it is considered to be. It may be interesting to note that proceedings on the Original Side of the Chartered High Courts were till recently not subject to any institution fee and still, there was no complaint that unhealthy litigation was rampant in the Presidency towns. Nor could it be said that when the Madras Legislature enacted the Court-Fees Amendment Act of 1922 by increasing the amount of fee by 50 per cent all round, the object was to check vexatious litigation. There is no data available

[8] Maine's Ancient Law, Chapter X, p. 396.

[9] Yagnavalkya, Chapter II, Verse 11, cited in Vivadha Thandava, Viramitrodaya, Smriti Chandrika.

[10] 14 C.W.N. 659.

[11] Under sections 207 (fraudulent claim to property), 209 (dishonestly making a false claim in Court) and 210 (fraudulently obtaining decree for sum not due) are all punishable with imprisonment, under the Indian Penal Code.

[12] 13 All. 66 at pp. 73, 74. "The legislature might not have been anxious to explain the reasons of these two enactments (The Stamp Act and the Court-Fees Act) but that reason can be nothing other than that they were taxing the Indian population, a statement which might not quite have suited the comfort of the Indian population had the enactment begun by saying something to this effect 'Whereas it is expedient to impose further taxes upon the people of India, etc.' I suspect this would be somewhat the imaginary preamble which could precede both the enactments but the adage is right "Sometimes silence is golden."

[13] 12 All. 164.

[14] 43 Bom. 507.

to show how far such object—if it were the object—has succeeded. Consequently, it is clear that though the levy of court-fees were originally intended as a device to put a check on irresponsible litigants indulging in litigation, that idea receded into the background and ceased to be the objective.

8. It is then for consideration whether the fee is a tax for the benefit of the general revenue or a fee for special services rendered by courts in adjudging claims. The view of jurists in England headed by Bentham was that "Justice ought not to be taxed." Mr. Hobhouse when he asked for leave to introduce the Court-Fees Bill of 1867 referred to the prevalent opinion in England and said that "the theory that justice should not be taxed did not meet with the entire approbation in England." Later on Mr. Maine also referred[15] to this and observed "that it was necessary to refute the sweeping generalization that judicial taxes in all countries were mischievous and improper." But Mr. Maine does not distinguish between "a fee" and "a tax" and justifies the taxation on the principle that "for centuries and centuries, there had seemed to be nothing more simple and natural than that the parties to a dispute should remunerate the authority by whom their differences were settled" and remarked that "due to the mistake of the appropriation of judicial fees by the Judge scandals arose and criticism was directed against the inequity of judicial taxation." A perusal of Mr. Maine's criticism of Bentham's view indicates that the fee was justified not as a *tax* but as a *fee* for services rendered by Courts of Justice. "But fees are distinguished from taxes by the fact that with fees the ruling principle is special payment for special services of special reckoning in each case between the treasury and the contributors, while with taxes, the ruling principle is generally contribution for general services, that is, general contributions for the expenses of maintaining order and promoting the welfare and culture of the people. If the duty to pay taxes follows from the fact of membership in the State, the duty of paying fees arises only as a result of making a special demand upon public institutions. Generally speaking, it may be said that where fees are charged for all services and do not exceed the cost of those services, the fees do not, for practical purposes, constitute taxation. The next stage is reached when the fees exceed the sum which it costs the Government to give the services with a small margin for unexpected expenses in which case, there is an element of taxation. Finally, there is a case where the fees are raised to such a height that they exceed the value of the services. Here too taxation arises, since the charges in excess of the value of the services is without any *quid pro quo*. Though, however, these distinctions can be made in theory, it is in practice very difficult to determine what is the value of any particular service rendered by Government.[16]

9. The *main* object of the levy is to recover some value for the services rendered by courts of law. The ancient Mahratta Government levied a tax from *both* parties to a suit.[17] This cannot be a simple fine. For, then there could be no justification to make a collection from a successful litigant. In Yagnavalkya Smriti[18] also it is laid down that a debtor shall be forced to pay the King ten in the hundred of the sum proved against him and the creditor having received the sum due must pay five in the hundred towards defraying the charge of judicature. The result is that these two shares belong to the King and the "Court-fee" levied—if an anachronism is permissible—was as high as 15 per cent. It was also observed by the High Court of Madras that "One of the *main* purposes of the Court-Fees Act is to levy fees for services to be rendered by courts and public officers.[19] and court-fee is described as the "price" payable to Government for the trial of the suit.[20]

10. There can be no doubt that it is the paramount duty of the State irrespective of the payment of fee to render justice. This principle is recognized by Government in providing for the adjudication of claims preferred by pauper litigants and proceedings in insolvency. Under the Provincial and Presidency Towns Insolvency Acts numerous decrees are passed in favour of the insolvent's estate and not a pie is collected in the shape of court-fees. Who is to pay for the up-keep of the Judicial machinery for the time spent in deciding pauper suits and applications by the Official Receivers and Assignees in insolvency matters ? Where litigants are able to pay, it is but proper that they should make their contribution for the upkeep of the courts of justice which specially cater to their wants. It is on this principle that the later legislation relating to court-fees was undertaken. Lord Lawrence considered that the greatest evil in the administration of justice arose from the underpayment to the mufassal Judges and officers of their courts. Plans were considered to remedy this evil and the main reason for the Stamp Bill of 1867 was a proposal by Mr. Strachey that a certain sum of money should be expended in enhancing the salaries of

[15] Abstract of Proceedings of Legislative Council, Vol. VI, p. 70.

[16] Vide Bullock's Select Readings Public Finance, pp. 193–194.

[17] Whitley's Hindu Law, p. 120.

[18] Colebrook's Digest, Vol. I, p. 372. *See* MacNaughten's Principles and Precedents of Hindu Law.

[19] 32 M. 305 at p. 310.

[20] per Wallace J. 49 M.L.J. 608.

ministerial officers and judicial officers. This proposal involved extra expenditure of several lakhs and the finances of the country could then ill-afford to bear the additional burden. To find ways and means, a Commission was appointed with the object to derive if possible out of the Stamp duties levied in judicial proceedings sufficient revenue to meet the increased expenditure to be incurred by the Courts and make the Courts self-supporting. On the recommendations of the Stamp Commission Act XXVI of 1867 was passed, which was then superseded by the present Court-Fees Act (VII of 1870).

11. Though, it is clear that the main object of the levy of court-fee is in consideration of special services rendered which burden it is found to be generally inequitable to make the general tax-payer bear,[21] it cannot be denied that there is an element of taxation in the levy of court-fee. True, there is no data available whether there is any surplus of court-fee over the cost of the administration of justice. Whether there is such a surplus or not, there are various provisions in the Court-Fees Act which cannot be stated to correspond to the value of services rendered but partake of the nature of a tax. They are the fees levied on probate of wills, letters of administration, succession certificates and certified copies of documents issued by courts. The Court-Fees Act makes no distinction between succession duty and other species of court-fee.[22] The recognition that there is an element of tax in the levy of court-fee is of great importance in the matter of the fixation of the scale of fees. If the fee is dependent solely on the time spent and the trouble taken by courts in adjudging the claims of litigants, as has been remarked by their Lordships of the Allahabad High Court, "it is absurd that a claim to a partition of an estate valued at Rs. 13 lakhs should pay precisely the same fee as a claim to partition of a house worth a hundred rupees."[23] It was taken for granted that *court-fee should bear some relation to the value of the right claimed in addition to the time of the court occupied in deciding it.* This could be justified only if the principle involved in taxation is assimilated in fixing the table of fees, as it is obvious that the value of the subject-matter cannot but be irrelevant if the time taken by courts and the labour involved in the trial are the sole criteria for the fixation of the fee. In introducing the Court-Fees Bill of 1869, Mr. Cockerill stated that the amount of fees is fixed not in proportion to the measure of labour imposed upon the court in the adjudication of the suit *but according to the value of the* matter litigated, i.e., *in proportion to the advantage which the suitor obtains or seeks to obtain through the Courts' action.*[24] The basic principle of the fixation of court-fee as set out in the above extract is criticised by the Indian Taxation Enquiry Committee as setting out an incorrect statement of fact and enunciating a principle that cannot be upheld.[25] But the criticism does not appear to be quite pertinent. They observe that the fee cannot depend on the advantage gained as it has to be assessed at the commencement of the action. That statement is only generally correct. There are cases where the determination could only be after the decree is passed, e.g., suits for accounts. The Committee also observe that it is incorrect to state that the court-fee is *proportionate* to the advantage obtained as the scale is regressive and not progressive. But the fact that the scale of fee is either progressive or regressive does not militate against the statement that the fee bears a relationship to the value of the subject-matter of the litigation. It may be that Mr. Cockerill was not quite precise in his language when he said that the court-fee is in *proportion* to the advantage which a suitor obtains. It is not imperative that the proportion should be the same. The main idea is that the fee should bear some relationship though it may be in varying proportions and be dependent on the value of the subject-matter of the litigation. In spite of their criticism of Mr. Cockerill's view, the Taxation Enquiry Committee finally came to the conclusion that the system now obtaining under which the fees are fixed is a suitable one and should be preferred to an attempt to measure the value of services rendered in individual cases.[26]

12. To sum up, it can be generally laid down that court-fee is primarily designed to cover the cost of the administration of justice by the levy of a special fee from that particular class of people who resort to courts, viz., the litigants, but in its levy there is an element of taxation. Even in the computation of services rendered, the principle adopted in taxation, viz., dependence on the intrinsic value of the subject-matter of litigation is assimilated in the levy of court-fee and the scale is not determined *merely* by the value of service rendered by courts.

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[21] Vide the observations of Jackson J. in A.I.R. 1931 Mad. 533 "*It will be hard on the general tax-payer to pay for the maintenance of courts of justice which cater to the wants of only a special class of citizens who invoke the jurisdiction of courts.*"

[22] 1937 (2) M.L.J. 899 at p. 901.

[23] Lal Ratnaker Singh *v.* Maharao Rajaram Sing, F.A. 278 of 1925.

[24] Proceedings of the Governor-General in Council, dated 10th September 1869, p. 288.

[25] Para. 336 of the Indian Taxation Enquiry Committee Report.

[26] Indian Taxation Committee's Report, para. 337.

CHAPTER III.—SCHEME OF THE REPORT.

13. Government observe[27] that the defects, anomalies and the incidence of the rates should be corrected rather by readjustments than by any general reduction of fees. Consequently, when, on an examination, it is found that the present levy of court-fee is heavy in certain classes of suits and a recommendation is made that they should be lowered, an increase in the levy in certain other classes of suits is inevitable. The incidence of court-fee taxation has to be fair, equitable and bear some relation to the magnitude of the claim and also to the time taken and labour involved in courts. Consequently, when a recommendation is made for instance for the lowering of court-fees in the case of money suits of value below Rs. 1,000, it has become necessary to raise the court-fee in certain other classes of suits both with a view to maintain the present level of court-fee revenue, and to make other classes of suits which at present escape with comparatively lighter fee bear their just and due proportion thereof.

14. The recommendations that are made in this report are largely inter-dependent. The court-fee that is recommended in cases of particular classes is fixed as far as possible according to the nature of the reliefs sought, and the magnitude of the claim. A general pattern of the well-known kinds of action is laid, and the recommendations regarding the scales of fee are made to fit a particular scheme. Consequently it might result in some cases in unequal incidence of the fee if the recommendations are accepted or discarded piecemeal

15. Most of the matters that are dealt with in this report have been the subject about which severe controversy raged giving rise, to conflicting judicial decisions. It is therefore quite possible that divergent views might be held about most of the topics that have been considered here. These have not been dealt with as isolated topics as in the decisions, but have been considered in relation to other similar topics, and as an integral part of the general scheme, so that a uniform and logical principle is followed in the determination of the fee leviable. It was clearly kept in view that there should be a harmonious adjustment and a proper incidence of the burden of court-fee. The Act though seemingly a minor one is in fact not so. It lags behind no other Act by which any particular source of revenue to Government is regulated, and inasmuch as no proceeding in a court of law or before a Public Officer—be it a petition for leave to appeal to the Privy Council or a petition to a Revenue Officer —can be filed without the payment of a certain fee, it becomes necessary to visualize all possible kinds of actions and embody the necessary provisions in the Act so that there may not be any possible lacuna. As it is obviously impossible to catalogue all kinds of actions, they have been divided into known kinds of actions and fees prescribed therefor. There are several difficulties in fixing the fee. In certain classes of suits it is impossible to determine the magnitude of the action or the relief that may be granted to a plaintiff at the outset. Though generally, no plaintiff can be awarded a decree for more than his claim, still, there are several exceptions to that general principle as in the case of suits for accounts, mesne profits, etc. There are other cases which commence in a certain form and then get themselves transformed into different proceedings, as for instance a probate petition becoming a contested testamentary suit. There are other classes of suits which from the very nature of the subject matter of the relief it is not possible to value in rupees, annas, pies. Still as the plaintiff, has of necessity to reduce every relief in terms of money, and put his own valuation provision has, of necessity, to be made to regulate any reckless under or over valuation. It has also been kept in view that the rules regulating the levy of the fee should be simple, that the classifications should be as few as possible, that the time of the court should not be absorbed in deciding the question of court-fees thereby frittering away its energies which should be well conserved for determining the real point at issue between the litigants, and that litigants should be prevented from manipulating the pleadings and reliefs sought by casting them in some particular shape in order to bring it within one section of the Court-Fees Act or another as they desire, and that the law relating to court-fee may not be characterised as in its present form as a "jig-saw puzzle." When all these conflicting elements are taken into consideration, and when it is found necessary to discard the method of computation of the fee, according to the time taken in the disposal of a suit for the reason that it is certainly not suited to the atmosphere of the mufassal courts, then the rules that could be devised could only be taken as satisfactory in the majority of cases and to the largest extent possible. From the nature of things, it is impossible to have a perfect system which will fit to a nicety any individual action that might be brought. There have been cases wherein the subject matter in dispute may be worth a comparatively small sum of Rs. 100 and still the trial may be so protracted as to engage the time of the court out of all proportion to the intrinsic value of the suit and on the other hand, there may

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[27] G.O. No. 1904, Miscellaneous, 1043, dated 10th April 1938.

be suits whose value is much higher but which does not engage the attention of the Court very much. Looked only from the principle of the court-fee being only the remuneration to the Crown for the services of its Judges, it might look incongruous that a tougher suit taking more time and taxing the Court to a larger extent should be let off lightly because the monetary value of the suit is little and *vice versa*. Fee or no fee, the Crown has to render justice, the pauper and the insolvent being equally entitled to it along with the rich. Justice cannot be ladled out at so much per hour as would result from the acceptance of the "hearing-fee principle," or according to the amount of court-fee levied, as would be the result of the "fee-for-service-rendered principle." Before the fee leviable is determined on, one should envisage all these several aspects, the duty of the State, the right of the citizen to seek justice irrespective of fee, the opportunity of the poor litigant to have his case administered by the courts of law without any relation to the amount of fee paid by him, the expediency of levying a higher fee commensurate with the intrinsic value of the subject matter of the litigation or value thereof to the litigant, the necessity to relieve the general tax-payer of the burden of judicial administration and all other things being equal, the expediency of modulating the fees and making it proportional to the general complexity and importance of the litigation. In the recommendations that follow, an attempt is made to reconcile the ever so many conflicting views about the several topics and matters that go to form the bulk of the Act. Therefore it is just possible that if any aspect is isolated and stressed, the recommendations might fall short of the ideal. Still, if the several conflicting views on the topic are considered and taking a comprehensive view, the largest common multiple is deduced, it is hoped that, that will approximate the recommendations made herein.

Chapter IV.—Method of Collection.

16. The amount of fee being determined, it has to be considered whether the whole is to be collected at the time of institution of the suit or whether it is expedient to collect a moiety of the fee at the time of the institution of the proceedings and the other moiety when the proceeding becomes a really contested one and the trial commences. This latter method is suggested by the Indian Taxation Enquiry Committee[28] in order to give a concession to parties who settle the matter out of Court and obviate the necessity of giving a refund of a moiety of court-fee paid in such cases. They suggest that the court-fee may be collected in two instalments, one payable at the time of institution of the suit and the second immediately after the settlement of issues. They make this suggestion "to remedy the unsatisfactory state of law relating to refunds" as they put it, though how they remedy it by their suggestion is not clear. In the case of *ex parte* suits, they observe "An *ex parte* disposal is not necessarily a speedy one, and an *ex parte* decree may mean that the party who brought the suit has been using the Court as a debt-collecting agency, and they propose that a second moiety of the fee be collected 'on or immediately after the settlement of issues.' What about the case that does not reach the stage of issues and no written statement is filed? Is or is not the second moiety to be collected in such a case according to the recommendations of the Committee? Obviously, it could not be collected. Then how does the recommendation steer clear of their criticism that an *ex parte* disposal is not a speedy one and the decree may mean that the party has used the Court as a debt-collecting agency" thereby implying that no refund is justified in such a case. Again, they refer in passing to the fact that "it is more than doubtful whether the whole of the money refunded will ever reach the pocket of the party who has paid the fee? This implies that there will be some percolation in the conduit pipe. There seems to be hardly any justification for this remark. Criticism like this is never helpful, for such a remark can be made in every case where any business is transacted through an agent. When the Indian Taxation Enquiry Committee recommended the collection of the fee in equal moieties, it was certainly not to facilitate the collection or to grant relief to the litigant to pay up his dues in easy instalments. Otherwise it could be justified only if the number of cases in which refunds are to be granted are so many, so that collection of the whole fee and refund of half of it in the majority of cases may be quite an unprofitable labour. But the cases in which refunds may have to be granted are comparatively few, so that it is not clear how this suggestion is an improvement on the present practice. Further, it will result in not the immediate but also an ultimate loss of revenue as those cases in which refunds may not be granted, might escape with the payment of half the fee. No doubt, litigants will be glad to have the fees cut down to a moiety at the commencement. The immediate result will be a fifty per cent drop in the realization of court-fees. Further, there are difficulties in the practical working of the scheme. At a certain stage of the trial, the party will have to be asked to pay an additional fee. Applications for extensions of time to settle the matter out

[28] Indian Taxation Committee Report, pp. 337–338.

of court are likely to be made by parties so as to obviate the necessity of paying the fee. This will be putting a premium on the defendant to get an adjournment when there is no denying the fact that adjournments are already notorious. Further, even if a party is willing to pay the other moiety, he may request further time to pay and the plaint may have to be treated as one with deficit court-fee—for only a moiety is paid—and for payment of the other half, time has to be granted under Order VII, rule 11 of the Code of Civil Procedure. If it is not paid then, the plaint may have to be rejected.

17. Of the two alternatives, of collecting the entire fee and granting a refund in particular cases and the collection of a moiety of the fee at the commencement and a collection of the other half at the time of the hearing, the first alternative is easier and better. Litigants being what they are, it is expedient to insist on a deposit at the outset and then refund to them whatever portion is superfluous. For instance, the rules relating to translation and printing in the Appellate Side of the High Court where the party has to make an initial deposit for printing and if the matter does not go up for printing, as happens when it is dismissed under the provisions of Order XLI, rule 11 of the Code of Civil Procedure, then the printing deposit is refunded. This rule has been framed as a result of experience gained in the working of the rules, that litigants generally default in, or delay, making payments. So also is the case of deposits in Privy Council matters, where there is a provision for the appellant depositing the costs of the opposite party even before the success or the failure of the appeal is determined. The analogy relied on by the Taxation Enquiry Committee on the practice obtaining in the county courts in England may not fit in with the scheme of things obtaining here. It is expedient to continue the present practice of levying the full fee at the time of the institution of the suit.

Chapter V.—The Court-Fees Act and Proceedings in the High Court and in the Presidency Small Cause Courts.

18. Chapter II of the Court-Fees Act relates to fees in the High Court and in the Presidency Court of Small Causes and Chapter III, to fees in other courts and in public offices. There is no provision in the Court-Fees Act prescribing the fees leviable in the Presidency Small Cause Courts. These are regulated by the Presidency Small Cause Courts Act. Sections 3 and 4 of the Court-Fees Act refer to the High Court. Whereas the latter section prescribes the court-fee the former, subject to the exceptions noticed hereafter, merely regulates the mode of collection. Section 4 refers to the extraordinary Original and Appellate jurisdiction of the High Court (except appeals from judgments of the Original Side). In all these, fees are leviable under the Court-Fees Act. As regards the proceedings on the Original Side the view has been taken that section 3 is a charging section regarding the proceedings set out in clause 2 thereof "though so far as its language goes it does not profess to prescribe a court-fee." The effect of the two sections is that in certain cases coming before the High Court, the Court-Fees Act itself prescribes the fee leviable (section 4 and clause 2 of section 3). In all other cases coming before that Court, the Act lays down only the mode of collecting the court-fee (section 3, clause 1). In the case of the Presidency Small Cause Court also, it merely prescribes the mode of collecting the fee (section 3, clause 3).[29]

18-A. In the High Court of Madras the view was taken that the powers of the High Court to frame rules for the levy of fees in proceedings on its Original Side were derived from section 15 of the Charter Act[30]. This provision is reproduced in section 107 of the Government of India Act, 1915[31] which superseded the earlier High Courts Act of 1861. "Section 107, clauses (*a*) to (*d*) refer only to courts *subordinate* to the High Court. But clause (*e*) is more general and deals with *all* courts including the High Courts."[32] Stress is laid in the Madras decision on the word "Such" found in clauses (*a*) to (*d*) being absent in clause (*e*) of section 107. To the same effect is an earlier decision of the Madras High Court[33] though the marginal note referring to "subordinate courts" adverted to in the later decision has not been considered there. It is doubtful whether such importance could be attached to the omission of the word "such" in clause (*e*) of section 107. The marginal note of the section clearly indicates that the section deals only with the powers of the High Court regarding subordinate courts. Obviously the Original Side of the High Court is not a court subordinate to the High Court of which it forms an integral part.[34] Again the wording of section 107 itself lends support to the view that the High

[29] 1931 A.I.R. (Mad.), 457.
[30] or The High Courts' Act, 1861 (24 & 25 Vic., Ch. 104).
[31] 26 Geo. Ch. 5.
[32] 1931 A.I.R. (Mad.) 457 p. 459.
[33] 45 Mad. 849.
[34] 13 R. 156.

Court's powers set out therein relate only to courts subject to its appellate jurisdiction. This is also the view taken by Mr. Justice Leach (now Chief Justice).[34] But it may be noted that section 3 of the Court-Fees Act itself refers to the powers of the High Court to frame rules regulating the fees payable on the Original Side of the High Court, as having been conferred by section 15 of the Indian High Courts Act, 1861, and section 107 of the Government of India Act, 1915. Further clause (e) of section 107 refers to the table of fees to be allowed to the *Sheriffs*, etc., which seems to refer to proceedings on the Original Side of the High Court. Still there is a good deal of uncertainty about it. "Section 107 of the Government of India Act, 1915, is not happily worded "[35] and it may well be doubted whether it confers on the High Court power to frame rules prescribing fees in proceedings on the Original Side. Section 224 of the Government of India Act, 1935, reproduces in main section 107 of the earlier Act. Though there is some difference in the wording of the marginal note, which now refers only to the administrative functions of High Courts, still the section reads as if the provisions are applicable only to the courts subordinate to the High Court. Therefore even as regards section 224, the criticism is pertinent that the section cannot clothe the High Court with power to frame any rules prescribing the fees leviable on the Original Side. Then the only other provision that could perhaps be construed as conferring such a right on the High Court is clause 37 of the Letters Patent. The Rangoon High Court [34] construed the "power of regulating proceedings" found in clause 35 of their Letters Patent (which is similar in language to clause 37 of the Letters Patent of the Madras High Court) as including the right to impose fees, and held that, that is the only source of the rule-making powers of the High Court. Even here it may be noticed that the power to levy fees has to be read into the provision for regulating proceedings and the clause seems to contemplate only processual rules as specific mention is made therein of the Code of Civil Procedure. But the power to make regulations for procedure, is taken "Necessarily to include the imposition of fees and collection of them ".[36] Whether the power is derived from section 224 of the Government of India Act or clause 37 of the Letters Patent, the rules framed thereunder should, if the former provision applies, not be inconsistent with the provision of any law for the time in force and if the latter provision applies, be subject to the power of the Indian Legislature by virtue of clause 44 of the Letters Patent. The result is that if there is any conflict between the rules framed by the High Court and any legislative enactment, the latter should prevail.[37] The enactment of section 3, clause 2 and section 4 of the Court-Fees Act, passed after the issue of the Letters Patent of 1861, has restricted the ambit of the rule-making powers of the High Court. Consequently the local legislature while enacting a new Court-Fees Act can make any of its provisions applicable to the High Court. It is expedient if any portion of the Act is so made applicable, it should be clearly set out instead of its being left to be inferred, as is the case at present. Further while enacting such a provision, care should be taken that there is no hardship, for the scheme of the levy of fees under the Court-Fees Act is generally on an *ad valorem* basis while the High Court Fees Rules are of a different pattern altogether, namely, the levy of a comparatively light institution fee and the collection of fees for subsequent proceedings and also hearing fees for the time taken by the High Court in adjudging the causes. While for instance the fee on a miscellaneous petition on the Appellate Side is Rs. 2, the same is Rs. 5 or Rs. 10 on the Original Side. Therefore the wholesale application of the Court-Fees Act to proceedings on the Original Side would result in hardship. Suggestions have been made in the course of this report as to what articles of the Court-Fees Act might with advantage be made applicable to the Original Side of the High Court. So far about its ordinary original jurisdiction.

19. Under section 4 of the Court-Fees Act the provisions of the Court-Fees Act apply *in toto* to the extraordinary original jurisdiction of the High Court and to the appellate jurisdiction (barring Original Side appeals) as also revision petitions and references. In the case of suits transferred to the High Court from the mufassal courts under the extraordinary original civil jurisdiction the proper fee under the Act would have already been collected in the courts, where the suits were instituted. The fees on the other proceedings will be according to the scale in the Act. What about hearing fees and fees on exhibits filed in the suits in the High Court ? Under the High Court Fees Rules these fees are leviable but they are not *fees* under the Court-Fees Act. It is doubtful whether the direction that fees according to the Act should be collected, preclude the levy of fees under the High Court Fees Rules which are not covered by the Act. If such a levy is permissible then it will work an obvious hardship. This should be clarified. Again under section 14 of the City

[34] 13 R. 156. [35] 1931 A.I.R. (Mad.) 457.
[36] Per Coutts Trotter J. in 45 M. 849 at p. 852 relied on in 13 R. 156.
[37] Vide observations of Venkatasubba Rao J. in 1931 A.I.R. (M.) 457 at p. 459 regarding fees prescribed in connexion with the extraordinary original civil jurisdiction of the High Court.

Civil Court Act, it is provided that the plaintiff should get credit for court-fee already paid by him in the case of suits transferred to the High Court from the former Court under section 13 of the Letters Patent or section 24 of the Code of Civil Procedure. There ought to be a provision for refund of excess court-fee, if any, over and above what would be leviable on the plaint, if it had been originally filed in the High Court.

20. Section 6 of the Act is the charging section in courts other than the High Court and as it is similar to section 4, it is expedient to club both the provisions. Section 3 should also be recast as it refers to an archaic state of things, for example, the reference to *fees payable to the "clerks and officers of the High Court."* Again there is a good deal of unnecessary confusion due to the lack of uniformity in the language of sections 4 and 6. Under section 4 no document which is not properly stamped under the Court-Fees Act shall be *"filed, exhibited* or *recorded* or shall be *received* or *furnished* by a High Court." Regarding mufassal courts, section 6 provides that no such document shall be *"filed, exhibited* or *recorded."* It is not stated that they shall not be *"received* or *furnished."* This has caused no end of confusion whether in the case of certified copies or the issue of probate and letters of administration they come under the ambit of the earlier portion of section 6. In the case of a public officer referred to in the latter part of section 6 there is only a prohibition against the receipt and furnishing of documents. It is necessary that sections 4 and 6 which relate to the jurisdiction of the High Court barring the original jurisdiction and the subordinate courts and public offices should be recast into a single section specifying that no documents that are chargeable to a fee under the Act shall be received by any such court, or public officer or furnished by them, unless they are properly stamped.

21. Regarding the Presidency Court of Small Causes there is a separate table of fees and the Court-Fees Act has no application. This isolation of the Presidency Court of Small Causes results in some anomalies. Under the Code of Civil Procedure where leave is granted to a plaintiff to sue *in forma pauperis*, the decree should provide for the collection of court-fees which would have been otherwise levied but for the grant of leave. Due to the absence of a like provision in the Presidency Court of Small Causes, where leave is granted to a "poor" plaintiff to file a suit without the payment of court-fee, the fee is never collected on the termination of the litigation, whether the plaintiff wins or loses. The result is that while a person who could pay court-fee to Government files a suit he pays the court-fee and if he is successful he includes it in his costs and collects it from the opposite party. But where he happens to be a pauper he is given leave to sue *in forma pauperis* and even though he gets a decree the court-fee due from him is not collected at all. There seems to be hardly any justification for this course. Again, no fees are charged for the interlocutory applications filed in a suit and they are not of a negligible number. Further till now vakalats were escaping the payment of court-fee though they are now made liable to a stamp duty of twelve annas which is quite inappropriate. This is commented on elsewhere. It is therefore not inexpedient to apply specified articles of the Court-Fees Act to proceedings in the Presidency Small Cause Court.

CHAPTER VI.—PREAMBLE AND DEFINITIONS.

22. The absence of a preamble has been severely criticised by Mr. Justice Mahmud.[38] Though it cannot be said to be a serious defect, still it is expedient to set out clearly the object of the Act in a preamble as is usually done in the case of an amending and consolidating Act.

23. Comment has been made in sundry decisions that various expressions found in the Act have not been defined in the Act. There is only one definition in the Act which is about the Chief Controlling Authority. It is hardly necessary to define the various expressions used in the Act, that have been defined in several other statutes, e.g., immovable property, decree, etc. A provision may be made that those expressions should have the same meaning as is found in the several enactments as the Transfer of Property Act, the Code of Civil Procedure, etc.[39] There are several other words, e.g., "value," "summary decision," which occur only in very few places, and regarding which it may be sufficient to add an explanatory definition to the appropriate section. Still a few more definitions may well be added. "Appeal" may be defined as including "cross objection." [Section 2 (2) of Madras Act V of 1922 and section 2 (1) of the Bengal Court-Fees Act.] "Collector" may be defined as including any officer not below the rank of a Revenue Divisional Officer appointed by the Collector to perform the function of a Collector under the Court-Fees Act [cf. section 2 (3) of the Bengal Act VII of 1935].

[38] 12 A, 129.
[39] Vide the observations of Schwabe C.J., in the unreported decision S.R. 1923 of 1923 set out in Mr. Satyamurti Ayyar's Court-fees Act Third Edition, pp. 423 to 426.

PART II.—PROCEDURE TO BE FOLLOWED FOR THE ASCERTAINMENT, COLLECTION AND REFUND OF COURT-FEES.

CHAPTER VII.—CHECK ON VALUATION OF SUITS.

24. Where *ad valorem* fee is leviable on the value of the subject-matter of the suit, the plaintiff or appellant should set out the value in the plaint or the memorandum of appeal. If the court is of opinion that there is an undervaluation, it should have power to investigate the matter and if necessary issue a commission to ascertain the correct value. The scope of section 9 of the Court Fees Act is rather narrow as it provides for the issue of a commission only in certain cases. There is no provision as to how the costs of the commission is to be met. Consequently it is desirable to invest the court with the necessary powers and set out the procedure to be followed, which may be modelled on the lines found in Bengal Court Fees Act (VII of 1935), sections 8-A to 8-F. Further in view of the fact that safeguarding revenue is mainly the concern of Government, the details of valuation should be brought to its notice if it is to exercise an effective check on undervaluation. It is therefore necessary that a plaintiff or appellant should file along with the plaint or the memorandum of appeal, a detailed statement in duplicate in the prescribed form and duly verified giving full particulars of the valuation of the claim. One copy of such statement should be forwarded to the revenue authorities who will have an opportunity to check the valuation and bring to the notice of the court cases where the valuation is not correct.

CHAPTER VIII.—RIGHT OF GOVERNMENT TO INTERVENE IN COURT-FEE MATTERS.

25. The Court-Fees Act being a fiscal enactment, it follows that it is the Crown that is vitally interested in any question relating to court-fee. Where a person desires to sue *in forma pauperis*, Government is given notice. A copy of the valuation of the estate filed by a petitioner for probate or letters of administration, is sent to the revenue authorities and Government have also the right to intervene and get an adjudication by court regarding the value of the assets of the deceased for the collection of the correct duty.[39] In fact decisions go to the length of holding that a defendant cannot be held to be interested in the collection of the proper court-fee from the plaintiff and a decision in favour of the plaintiff is held not to be against the defendant.[40] Even in the case of appeals by persons who have been given leave to sue *in forma pauperis* in the lower court, Government have suggested that notice should be given to them so that the Government Pleader may be heard on the question of pauperism.[40-a] The absence of a specific provision in the Act that Government is a party has given rise to the view taken by the Madras High Court[41] that where there is a decision by a subordinate court to the detriment of revenue, Government cannot seek to have it revised by the High Court as could a plaintiff against whom such a decision is given. It is therefore necessary to have a specific provision to that effect.

CHAPTER IX.—FINALITY OF DECISIONS RELATING TO COURT-FEE.

26. Where there is a dispute between a party and the office relating to the court-fee leviable in any case, the court decides the question. But in the High Court there is a Special Officer called the Taxing Officer who decides similar questions in proceedings filed in the High Court. Therefore while the question of finality of such decisions is considered, the decision of a Taxing Officer of the High Court will have to be considered separately.

27. The powers of a Taxing Officer are set out in section 5 of the Court-Fees Act which vests him with jurisdiction to decide all questions relating to court-fees in proceedings in the High Court. He has no jurisdiction to decide the adequacy or otherwise of the fee collected by the court of first instance or the lower appellate court. Such a power is vested only in the court under section 12, clause (2) of the Act. Consequently in a case where the subject matter in the suit and an appeal to the High Court is the same, the Taxing Officer could decide what fee is payable on the memorandum of appeal to the High Court.

[39] Section 19 H of the Court-Fees Act.

[40] 56 M.L.J. 302; 69 M.L.J. 479.

[40-a] The fact, however, remains that though notice goes to Government the conduct of opposing any application for leave to sue *in forma pauperis* is generally left in the hands of the defendant, and the Government contents itself in simply intimating the court that they either accept the applicant is a pauper or not. Consequently cases are not infrequent where courts have after investigation come to the conclusion that a person is not a pauper, even in cases Government do not oppose. A more active participation by Government in such an inquiry is desirable in the interests of the Crown.

[41] 56 Mad. 744.

This may in some cases happen to be different from the decision on court-fees by the lower court. Though obviously one of them must be wrong, still both decisions are final. The Taxing Officer cannot revise the decision of the lower court as it is only the appellate court that has jurisdiction to do so under section 12 of the Act. If the appellate court upholds the decision of the lower court it leads to this patent absurdity that a different view on the same matter taken by the Taxing Officer is still final and must prevail and the High Court has no jurisdiction to set it right. Such a contingency was adverted to in a decision of the Calcutta High Court[42] and it was observed that it is for the legislature to cure the defect as courts could only administer the law as they find it. Strong criticism was directed by the Allahabad High Court,[43] to the absence of a provision in the Act to grant relief to a party from whom excess court-fee has been collected by a wrong order of court. A Bench of this court[44] had also occasion to consider this question where the correctness of a court-fee decision of the Taxing Officer was questioned. Though they disagreed with the decision they expressed their inability to set it aside as it was final, and refused to make an order granting a refund. But later on, [45] at the petitioner's request they directed the office to issue a certificate to the effect that the levy was wrong "with a view to enable the petitioner to apply to the revenue authorities for a refund of the court-fee wrongly levied." This indicates the trend of the judicial opinion that courts should have power in proper cases to interfere with and reconsider the decision of the Taxing Officer. It was pointed out that section 5 like several other sections of the Court-Fees Act, is undoubtedly defective, "as it makes no provision for the Taxing Officer being compelled to refer the question to the Judge of the court."[44] One cannot accept in its entirety the expediency of this suggestion that the hands of the Taxing Officer should be forced by a party to make a reference. At present, the Taxing Officer has got a right to make a reference *suo motu* and this he will do in proper cases. Nor is it expedient that when the Taxing Officer gives a decision, any aggrieved party should have the right to take it on appeal or otherwise invoke the jurisdiction of any higher authorities. That would defeat the fundamental principle underlying the whole scheme of the Court-Fees Act that court-fee questions should not be allowed to loom large and be on a par with the other issues in the suit but should be quickly and finally adjudicated upon. What is now recommended is to give a right to the court at the time of the disposal of the appeal to interefere with the decision of the Taxing Master relating to court-fee where it is considered expedient and just, and make consequential orders regarding the collection of a higher fee or the refund of any excess fee collected.

28. The other provision regarding the finality is embodied in section 12 of the Court-Fees Act. In clause (i) it is provided that the decision of court relating to the valuation for the purpose of determining the court-fee chargeable shall be final as between the parties to the suit. This has given rise to no end of trouble in its practical working. In the first place, difficulty arises from the difference in language between section 12 and section 5, whether it was deliberate or otherwise. In section 12 the words used are, "question relating to valuation for the purpose of determining the amount of court-fee." Then there was a conflict of decisions as to whether the valuation contemplated in section 12 is valuation pure and simple or whether it covered the category under which the subject-matter should be classified. But this has been concluded quite recently by a decision of a Full Bench of the High Court of Madras.[46] It is however expedient that the wording of section 12 should be amended to bring it in a line with section 5 so that all the discussions which the word "valuation" has given rise to, might be set at rest.

29. But the more important fact that has to be considered is the question of finality of the decision. If it is final between the parties, then it follows as a necessary corollary that it can never form the subject-matter of an appeal or revision either directly or indirectly. But the trend of decisions is that a plaintiff against whom a decision regarding court-fee has been given has the right to move the High Court in revision, though no revision is provided for in the Court-Fees Act or in the Code of Civil Procedure, and thereby seek a rectification of a wrong order relating to court-fee. It is obviously difficult to reconcile the maintainability of a revision petition in face of the express provision in the statute that a decision is final with regard to *every* party to the suit. Further it has been held [47] that although a revision petition lies when the decision of the lower court with regard to court-fee payable is unfavourable to the plaintiff, it does not lie when any such decision is in plaintiff's favour. The view taken was that where the decision is in favour of the plaintiff, it does not

[42] 1935 A.I.R. C. 338.

[43] Per Mahmud g. in 12 A. 129.

[44] 71 M.L.J. 677.

[45] Vide note attached to the report. Per Venkatasubba Rao J. in 71 M.L.J. 677 at p. 680.

[46] I.L.R. (1937) Mad. 275; (1937) 1 M.L.J. 1 at p. 6.

[47] 56 M.L.J. 302; 51 M. 664.

follow that it is against the defendant. The reason why a revision was allowed is set out in the latter decision where it was held that when the order is unfavourable to the plaintiff, it may result in great hardship to him and the interests of justice demanded that the High Court should at once rectify the error without waiting till the plaint is finally rejected and an appeal is filed. Of course this interference in revision to modify an order which is made final by a clear provision of the statute is sought to be justified[48] on the ground that the High Court has jurisdiction to correct the errors of subordinate courts and this power has *not been expressly taken away* by any of the provisions of the Court-Fees Act. But, if this reasoning is correct why should the Judges have expressed their want of jurisdiction to refund excess court-fee that have been collected under a wrong order of court or paid by a party under a mistake as it could be contended even in those cases that the powers have not been expressly taken away? Revisional Jurisdiction is only part of the appellate jurisdiction [49] of the High Court and the grounds on which there could be such interference in revision are set out in section 115, Civil Procedure Code. Of course, where the requirements of the law have been duly and properly obeyed by the court whose order is the subject of revision, the High Court will not interfere with the decision of the lower court and substitute [50] its own judgment for that of the lower court. The exercise of the revisional jurisdiction cannot be justified under the Court-Fees Act or the Code of Civil Procedure.[50a] But there is always that fountain head of inherent powers, which courts can always draw upon in any contingency. And perhaps it is but proper that the highest courts in the land should not be helpless to redress a grievance or rectify a wrong. All things being said and done, it cannot be denied there is a good deal of uncertainty about these revisional powers of the High Court. The stricter view and perhaps one more in consonance with the language of section 12 is that the party against whom a decision of court-fee is given has to wait till as a consequence of that decision and his non-compliance with the requisition, the plaint is rejected under Order 7, rule 11, Civil Procedure Code, and then file an appeal stating that the rejection is wrong. It is clear that the High Court is actuated by considerations of equity in exercising revisional jurisdiction in such matters in the face of a positive interdiction in the Court-Fees Act. Reference is made to this only to show that this is a telling instance where Judge-made law has abrogated the clear provisions of the legislature. Text-book writers have quoted this irreconcilability of the law found in the decisions and in the Act and have suggested the expediency of bringing the enactment in line with the law as enunciated in the decisions both on grounds of expediency and of policy. As far as possible, violent changes in the matter of accepted principles have to be avoided, though it may well be doubted whether the decisions are correct. It is clear that where Judges have deliberately whittled down the clear words of the statute they must have been actuated to do so by high principles of equity and the desirability of the law being what it ought to be than what it is. Therefore where the Judges have thought it necessary—and in this there is an amazingly uniform array of precedents—to deviate from the strict letter of the law, there must be something in it that justified such a deviation. And therefore, the question arises when there is the legislative interference, it may not be expedient to bring the statute law in line with the law as administered at present in the courts.

29-A. It is for consideration whether the party aggrieved by a court-fee decision (including the Government) should necessarily invoke the jurisdiction of the High Court by way of revision or could appeal to a superior court as in the case of any other order. In the Court-Fees Act recently passed by the United Provinces, provision is made in section 6-A for an appeal in Court-fee matters. This strikes at the root of finality of court-fee decisions, envisaged by sections 5 and 12 of the Court-Fees Act. But as already stated the so-called finality is only partial for if the decision could be upset in revision, there could be no finality. Further, though there may be no appeal against court-fee decisions as such, there is an appeal against an order of dismissal of a suit for non-payment of deficit court-fee, which itself depends on a court-fee decision that is challenged. Thus there is nothing strange in the United Provinces Court-Fees Act straightaway providing for an appeal. The present procedure is to file a revision petition. This jurisdiction being vested only in the High Court, all court-fee matters have to come up to the High Court. This is not unusual however as revision petitions under section 25 of the Provincial Small Causes Courts Act have to be filed only in the High Court. It was thought perhaps that court-fee matters should be speedily and summarily decided and a right of appeal might have been properly thought inexpedient. But it is doubtful whether the object has been achieved as the finality is more in theory than in practice. Hence the procedure in vogue in the United Provinces

[48] Per Horwill J. in 71 M.L.J. 677 at pp. 686–687.
[49] 22 M. 68; 39 M. 235; 41 C. 323.
[50] 7 Bom. 341; 10 All. 467.
[50a] (1939) 1 M.L.J. 317.

may also be considered as a possible substitute to the present procedure for filing revision petitions. It has got this merit that the High Court will not be encumbered by all the court-fee matters that arise in every subordinate court. It will also avoid a difficulty now existing, namely, that while a civil revision petition is pending in the High Court, the plaint happens to be rejected in the lower court, an appeal might have been preferred to a subordinate court and that court will have jurisdiction and is even under an obligation to decide the correctness of the court-fee decision in the lower court under the provisions of the Act. The provision in the United Provinces Act (section 6-A) may therefore well be considered in this connection. It provides that any person called upon to make good a deficiency in court-fee may appeal against such an order as if it were an order appealable under section 104 of the Code of Civil Procedure. In case an appeal is filed and the plaintiff does not make good the deficiency all proceedings in the suit *shall* be stayed, and all interim orders made, including an order granting an injunction or appointing a receiver *shall* be discharged. It is doubtful whether the provisions if adopted need be so rigorous and imperative and whether it may not be left to the discretion of the Court either to stay the suit or to vacate the interim order. Elaborate provisions are found in the Act, about the intimation to the Chief Inspector of Stamps and his powers to intervene. This is anologous to the provisions in the Indian Stamp Act about the right of the Collector to make a reference in cases arising under the Indian Stamp Act.

30. As regards the revisional interference by the High Court, it is also settled that a defendant cannot invoke the revisional jurisdiction of the High Court to question the correctness of the lower court's order regarding court-fee payable by plaintiff. The order is stated to be final " between the parties." An order is an order and if one of the parties who is bound by that order could agitate the matter in a civil revision petition, it is but proper that any other party who is bound by that order should have an equal opportunity of questioning its correctness. But the decisions do not admit such a right to a defendant. This is so because it is considered that court-fee is not the concern of the defendant; it is a question that is mainly one between the Crown and the suitor and if a court gives a decision, it is either the plaintiff who can say that he is mulcted in too heavy a fee or the Crown that can possibly say that the plaintiff has been let off too lightly to the detriment of revenue. As has been observed by our High Court [51] " the defendant has strictly speaking no legal *right* to raise a plea regarding court-fee but his function is deemed to be subject to the court's leave merely to assist it, in coming to a proper decision." Every decision that is in favour of the plaintiff is not, *ipso facto* one against the defendant and consequently it seems expedient to maintain the present state of the law regarding the finality of a court-fee decision as against a defendant or respondent.

31. The desirability of recognizing the right of Government to intervene has already been adverted to. It follows therefrom that the Government should have the right to move the High Court to revise any court-fee decision against the Crown. There cannot be any questioning the fact that the Court-Fees Act is a fiscal enactment and consequently the Crown whose revenue is affected is primarily interested. It is clear from the procedure followed by courts of giving notice to a Government Pleader in all important matters where a question of court-fee arises. Where applications for leave to sue or appeal *in forma pauperis* are presented, the Code requires notice to the Government. Even in the matter of waiver of collection of court-fee, in certain cases courts simply recommend cases as fit for waiver and it is the Government that can waive it. In that view, it is quite clear that if at all anybody is to be heard, it is the Government in support of the collection of a certain fee and the plaintiff who is the person who may be obliged to pay. Therefore, it is quite expedient proper and but just that the Government should have a right of hearing on all questions pertaining to court-fee. The unpractical method of giving notice to the Government in every suit pending before court and decide any question of court-fee in its presence and in its presence alone, is not advocated here. But it is quite a different thing also to contend that Government is not a party at all and the decision of all questions of court-fee is only in the nature of a domestic right between the plaintiff and the defendant and the Government cannot intervene. While Government must make its own arrangements—and in this connection courts have always endeavoured their level best to assist the Government to get to know of cases wherein inadequate court-fees are paid—it has a right to intervene and be heard on that matter. If that position is conceded, then the other right follows, namely, where the Government gets an adverse decision in the matter, it should have the normal right of agitating it in a superior Court. It is only proper that where a plaintiff against whom there is an adverse decision of court-fee is entitled to move the superior court either in revision or by an appeal against an order rejecting the plaint, the Government against whom a decision regarding court-fee has been given should equally

[51] 69 M.L.J. 479.

be entitled to move the High Court to revise the court-fee decision. The view above expressed runs counter to the decision of the Madras High Court.[52] There, it was held that neither under section 115 of the Code of Civil Procedure nor under section 107 of the Government of India Act has a High Court "*power to interfere*" in revision with an order in regard to court-fee which is in favour of the plaintiff. It was doubted whether in view of the fact that Government was not a party to the suit, a revision petition presented by it against an order in regard to court-fee was at all competent. Therefore the only method by which this doubt can be removed—and it is expedient that it should be removed—is by a clear enunciation by the Legislature that the Government must be deemed to be a party in all cases where a question of court-fee is considered. A decision against the plaintiff might well be, in the words of Justice Venkatasubba Rao[53] a decision not necessarily against the defendant but this observation cannot apply to the Government who can, by no stretch of imagination be stated to be not prejudiced by a decision in favour of the plaintiff which must consequently be against the Government to the detriment of the revenue of the Crown.

32. Another method whereby the finality may be shaken is by review. It cannot be denied that where the court thinks proper to review its own order, it must be competent for it to do so, whether it does it *suo motu* or is set in motion by any party. That courts have got such power to review their own decisions is clearly recognized.[54] It has been held that the court may for good and sufficient reasons review its own order of demand on application by the plaintiff or on its own motion. Government too must be able to invoke this power of review, in view of the suggestions made above.

33. The rejection of a plaint consequent on the plaintiff's adherence to his view and refusal to pay the court-fee according to the decision of the Court also gives rise to an anomaly. If the plaintiff persists in not paying the fee, the plaint is rejected under Order 7, rule 11, Civil Procedure Code. Against that, an appeal is provided in the Code. It has been held in a recent Full Bench decision of our High Court that the finality of orders referred to by this section cannot bar the right of appeal conferred expressly by the Code under section 96 against an order rejecting a plaint.[55] But could the appellant question the correctness of the decision of court-fee by the lower court? It is not clear how he could. Right or wrong, the Court-Fees Act provides that the decision is final. The plaintiff is consequently bound by that decision. Though bound by it, he still fails to comply with the direction to make good the deficit court-fee. The result is a rejection of the plaint according to the provisions of the Code of Civil Procedure or a dismissal of the suit under the Court-Fees Act. It stands to reason that a decision cannot both be final and liable to be agitated in an appeal. As an appeal is of no use unless the appellant is permitted to canvass the correctness of the decision of the lower court, section 12 (1) of the Court-Fees Act can well be construed as barring an appeal against court-fee decisions though section 96 of the Code generally provides for appeals against all decrees. But still, appeals have been entertained under the Code by all courts and courts are of opinion that they could consider the correctness of the decision of court-fee in the appellate court. Therefore, it is necessary that the right of the appellate court to consider the correctness or otherwise of a decision relating to court-fee in the trial Court which has led to a rejection of the plaint should be given statutory recognition.

34. The appellate court can take action under section 12 (ii) where there is a wrong decision of the lower court to the detriment of revenue. Curiously, there is no provision conferring jurisdiction on the court to decide a question in favour of an aggrieved party even though the court may come to the conclusion that excess court-fee has been collected from a party due to a wrong decision of the lower court. This aspect of the case has been quite severely and properly criticized by that learned Judge, Justice Mahmud, in 12 All. 129 where His Lordship says that "the enactment, as the learned Chief Justice has explained, is most anxious to collect money from those who seek to obtain justice but there is not one word in that statute to enable the litigant who is to be subject to these stringent rules to re-obtain the sum of money, which he, by dint of wrongful user of the powers given to the Taxing Officer, does pay as court-fee." Therefore, it is just equitable and proper that the appellate court should have the power to decide the question not only in cases where the wrong decision of the lower court is to the detriment of revenue and consequently against the Crown, but also where it is in favour of the Crown and against the party.

Till recently there was some doubtas to whether an appellate court can take action under this sub-section where the decision of the lower court on the question of court-fee was not one involving purely a question of valuation, i.e., appraisement, but a question of category under which the suit falls for the purpose of computing value. This was because of

[52] 56 M. 744. [53] 56 M.L.J. 302.
[54] 4 Patna Law Journal 57. *See* also the judgment of Jackson J. in 50 M.L.J. 493.
[55] I.L.R. (1937) Mad. 275 (F.B.)

the narrow interpretation placed on the words "every question of valuation" mentioned in section 12, clause 1 of the Act, to which reference is made in the next clause as the "*said question.*" It would be anomalous if the appellate court's powers are to be confined to the consideration of the wrong order of subordinate courts on a question of valuation pure and simple—which would be one of fact—and not on a question of category, which would be one of law or of mixed law and fact. But it is now settled by the recent Full Bench decision of our court[55] that the words "question of valuation" must be construed as including both a question of appraisement within a particular category and question of category under which the suit falls for computation of value. Still there may be a third class of cases as pointed out in the judgment of Mr. Justice Venkatasubba Rao in the Full Bench case, where the decision of the lower Court as to court-fee was one neither relating to valuation pure and simple, nor to the category in which the suit falls for the computation of valuation —where on the same valuation different court-fees would be chargeable under different provisions of the Act [e.g., Schedule I, article 1 or article 2; Schedule I, article 1 or Schedule II, article 11; Schedule I, article 1 or Schedule II, article 17-A (1); Schedule II, article 17 (1) or Schedule II, article 17-A, or cases where calculation of court-fees separately under section 17 would make a difference in court-fee, though the aggregate valuation remains the same]. If the language of section 12 (1) is made more comprehensive and brought into line with that of section 5 as already suggested all this difficulty would be solved and the appellate court would have jurisdiction to consider all the decisions of the lower court on questions of court-fees.

One other question that is again the subject of conflict of decisions is whether this right of the appellate court to set right a wrong decision regarding court-fee of the lower court arises where the subject matter in the original suit and the appeal is not the same. The view taken in a recent decision[56] is that where the entirety of the subject matter of the lower court is not the subject matter in the appeal, the court has not got any power to collect the entire court-fee that is payable by the party and has not been paid by him. If this view is accepted, it will lead to difficulties in practical working, as nice questions of apportionment of the subject matter of the appeal and the subject matter in the lower court may have to be decided. Further, questions of policy and expediency play a large part in this enactment. It is but fair and proper that where a plaintiff has not paid his dues, he should be called upon to pay it where the court has again got seisin of the matter as it happens when an appeal is filed against the decree. It is a matter of little moment that the plaintiff has been partially successful in the lower court. It seems proper to hold generally that where the appellate court becomes seised of the matter either in full or in part by an appeal being preferred either by the plaintiff or by the defendant, it should have powers to determine the correctness of the decision regarding court-fee by the lower court in cases when there is a controversy regarding same or *suo motu*.

CHAPTER X.—METHOD OF COLLECTING DEFICIT COURT-FEE PAYABLE IN LOWER COURTS.

35. Once the court of appeal gives a finding that the fee paid in the lower court is deficient, it follows that the procedure for realizing same should be set out in the Act. At present the Act is silent about it. Therefore the courts are constrained to devise ways and means to compel the defaulting party to pay the deficit. One such method is for the appellate court to stay the hearing of the appeal till the deficit is made good and if the deficit is not paid, dismiss the appeal. This could happen only in case the person who has to pay the deficit court-fee in the lower court happens to be the appellant and will be inappropriate where he happens to be the respondent. Another method is to refuse to hear counsel appearing for the party in default who will be deemed to be in contempt till he purges himself of same. Yet another course is to withhold the issue of the decree of the appellate court. Courts are thus constrained to devise ways and means for the collection of the deficit. It is desirable that there should be a statutory provision for the amount being realized as otherwise there may not be any point in an appellate court being vested with the power of considering the correctness or otherwise of a decision regarding court-fee, of the subordinate courts. The appellant may be either a plaintiff or a defendant. The plaintiff might have his claim dismissed *in toto* or might have been successful in part and the appeal might relate only to a portion of the subject matter. Even though in cases where the plaintiff whose suit has been totally dismissed is the defaulter, it might be a convenient method for the appellate court to dismiss the appeal in case the plaintiff defaults in paying the deficit court-fee, still in the case where the plaintiff has been

[55] I.L.R. (1937) Mad. 275 (F.B.) [56] (1938) I. M.L.J. 29.

partially successful and the appeal relates only to a portion of the subject matter it would not be proper to dismiss the suit *in toto* as the plaintiff has a vested right to that portion of the claim that has fructified into a decree and courts are not competent unless it be in an appeal on the merits or on review to vacate a decree that has been passed in favour of a party. Where the defaulter is a respondent in appeal, things are worse, for if the appellant is called upon to pay the deficit for which the respondent is responsible and if there is any stay of the hearing of the appeal or dismissal, it is a punishment meted out to the wrong party. All the present methods, namely, the stay of the hearing of the appeal, refusal to hear counsel, dismissal of the appeal, withholding the issue of the appellate decree are all very crude methods by which the defaulting party can be compelled to make good the default. It is therefore recommended that where the appellate court becomes seised of the whole or any portion of the subject matter of the suit in appeal, the provisions of section 12 of the Act should be so amended giving Government power to collect the deficit court-fee according to the finding of the appellate court, as a public demand. Every order that is passed by the appellate court regarding deficiency of court-fees in the lower court should be communicated to Government as in the case of orders passed in proceedings instituted by paupers, and it is the duty of the Government to take such steps as might be necessary for the realization of the amount which is justly due to the Crown and which, due to a wrong decision by the lower court, has not been collected. (Cf. The Bengal Court-Fees Act as amended by Act VII of 1935.) As this provision merely relates to procedure, and the method of collection and not the liability to court-fees, there is no objection to effect being given to same even in pending proceedings.

CHAPTER XI.—REFUNDS.

36. Closely following the collection of fees, the question of refund of fees may be considered. It has been recognized that under certain circumstances a refund of court-fees either in full or in part is just and equitable. At present there are certain statutory provisions that provide for a refund and more often than not courts act in the exercise of their inherent powers and order refund. The practice in such cases is not uniform. There are also cases where refunds are not allowed at present and where such relief appears to be appropriate.

37. Where an appellate court remands a suit for rehearing by the trial court, there is a statutory provision for the refund of court-fee paid on the memorandum of appeal. At the time the Court-Fees Act was passed, the Code of Civil Procedure provided for a remand only where the trial court has disposed of the suit on a preliminary point. Since then Order 41, rule 23, of the Code has been amended in Madras granting wider powers to an appellate court to remand the case to the trial court irrespective of whether the suit has been disposed of on a preliminary issue or not.

38. All the High Courts except the Allahabad High Court have held that even in cases not falling within the scope of Order 41, rule 23, of the Code, an appellate court has inherent power *ex debito justitiae* to remand a case for retrial. The Madras amendment while keeping the restricted powers of remand given by the Code in Order 41, rule 23, intact grafts on to it an alternative clause which is none else than a legislative recognition of the inherent powers of court to order a remand whenever a court considers it expedient to do so. The result is that whenever an appellate court remands the suit, section 13 of the Court-Fees Act read with the General Clauses Act permits the refund of the court-fee paid on the memorandum of appeal though it is doubtful whether this result was contemplated by the framers of the Court-Fees Act when it was originally enacted. It is therefore necessary to make the law conform to practice and give legislative recognition to the powers of an appellate court to refund the court-fee in all cases of remand.

39. The present law is defective with reference to cases of remand ordered by the second appellate court. As the section stands at present, it provides for the refund of the fee paid on the memorandum of appeal. This is construed to mean that refund is allowable only of the fee paid on the memorandum of appeal in which the order of remand is made. If such an order is made in a second appeal, the fee paid on the memorandum of first appeal is not refundable. There is no justification for this distinction especially when a remand with a direction for a trial *de novo* results in complete effacement of all the proceedings since its commencement. For instance, when a Bench of the High Court in a Letters Patent appeal directed a remand of the suit to the trial court, the party was able to get only a refund of the fees paid on the appeal memorandum in the Letters Patent appeal but the court could not, under the Court-Fees Act, as it stands at present, grant refund of the fee paid on the memorandum of second appeal or on the memorandum of appeal of the first appellate court. [57] To be logical, all such fees are to be refunded or no fee should be refunded. The principle is that there should be a refund in the peculiar circumstances of a remand where the appellate court in proper cases considers it necessary that there should be a retrial. It is but proper that a party should not be mulcted with the costs of fees in the appellate courts when in the view of the second appellate court, the appeal was necessitated by the lower court going on a wrong track altogether. Appellate courts order a remand where the trial court has wrongly decided a preliminary point so that the trial in the other issues became unnecessary. In that case, of course, the trial has not been completed in the trial court and a party who is under a necessity to have the suit tried in its entirety is entitled to get back the fee paid on the appeal memorandum. If the appellate court thinks it necessary to remand the suit in other cases, for sufficient reasons, it can only be in cases where the appellate court by itself could not rectify them and pass proper decrees. There must have been something totally unsustainable in the procedure adopted in the trial court which necessitated the appellate court directing a fresh disposal of the suit. In such cases, it is but fair that the fees paid on the memorandum of appeal should be refunded and logic demands that the fees paid on the memorandum of appeal or where there are more than one memorandum of appeal, on the several memoranda of appeal, should be refunded as well. Proper provision should be made to that effect.

39-A. Certain classes of cases where a decree is modified or set aside on a successful application for review are entitled or should be entitled to the benefit of a refund of fees paid on such petitions. The expediency of collecting in a review petition at the outset only a moiety of the fee payable on the proceedings which is reviewed irrespective of the petition being filed on or before the ninetieth day is considered elsewhere. Section 15 of the Court-Fees Act provides for the refund of this fee in certain cases. But the section is defective. The conditions under which a review could be granted are set out in Order 47 of the Code of Civil Procedure. It should normally be expected that the Court-Fees Act should regulate the conditions under which refund should be granted by Courts even if there is a successful review. But the wording of section 15 of the Court-Fees Act is not quite happy and does not accord with the provisions of the Code. Under the Court-Fees Act, a refund can be allowed where the court on review reverses or modifies its former decision "on the ground of mistake in law or fact." But under the Code, the review itself is possible only if there is the superimposition of a further condition that this mistake should be apparent on the face of the records. There ought to be finality of judgments at some stage. It is against public policy for courts to go on reviewing and reconsidering their decisions in the light of fresh enunciations of law or otherwise. Therefore, the present provision in the Court-Fees Act providing refund in cases where there is a reversal or modification of a decision on review on grounds of mistake in law or fact *simplicitor* does not accord with the provisions of the Code, as in such a case the Court would not, as it could not, have allowed review at all. According to the Code, the condition is prescribed that the error or mistake should be apparent on the face of the record. In such cases, the court exercises its inherent powers to rectify its own mistakes under the provisions of section 151 of the Code and if the court does not notice it, *suo motu* but the attention of the court is drawn to it by a review application, it is but proper that the party who has taken pains to point out the mistake, in which the court should itself have moved and rectified under section 151 of the Code, should not be mulcted with any court-fee. And if he had paid the court-fee, it stands to reason that he should get a refund of same. Again Order 47, rule 1, of the Code permits review upon fresh evidence in the suit to be let in only in cases where the evidence could not have been furnished at the trial. In view of that restriction even in the Code, there is no point in the provision in section 15, paragraph 2, of the Court-Fees Act, as the court itself could not under the circumstances have allowed the review, and no question of refund of court-fee can obviously arise. Yet another aspect is that a review can be allowed even in cases not covered by the above, if the court finds "sufficient reason" for same. As section 15 of the Act stands at present, no refund can be granted even though the courts allow review for "sufficient reason." It is not apparent why, if a review is allowed, then refund should not follow as a matter of course, unless it be, the review was necessitated by any laches or neglect of the applicant. This defect should also be rectified.

40. Another class of cases for which at present there is no provision in the Act is where a higher fee has been collected by a *wrong order of court*. This is severely criticized by Justice Mahomud[58] who deprecated in very strong terms the absence of a provision in the Code to refund to an aggrieved party amounts which have been wrongfully collected from him under a wrong order of court, while there is a provision for the court to collect the

[57] 1938 M.W.N. 161.

[58] 12 A. 129.

deficient court-fee which was omitted to be collected by the lower court due to a similarly wrong order. It is but elementary justice that there should be protection both ways—both for the Crown and the subject—and where there is a provision to the effect that the interests of the Crown should be safeguarded by the appellate court directing the collection of deficient court-fee which ought to have been collected from the party, there should be an equal protection to the subject to get redress where he convinces the appellate court that more amount has been collected from him than was legitimately due by him. Thus if the trial court reviews its own decision regarding court-fees or an appellate court or the High Court considers the decision of the lower court or that of the Taxing Officer in respect of court-fees directed to be collected is wrong, it should have in addition to the power of directing the collection of deficient court-fee that ought to have been levied, power to refund the court-fee that has been wrongly collected. Such a provision should be embodied in the Act.

41. It can well be imagined that there may be several other cases where it may be expedient to refund the whole or the portion of the court-fee as for instance where there is an excess payment due to mistake or inadvertance or where [59] a plaint which is filed and returned for rectification is not represented or an appeal is presented out of time and rejected without being taken on file, etc. That the courts found the necessity of giving redress in such cases will be plain from the multitude of decisions reported and unreported which go to show that courts have always been indenting on their inherent powers to rectify an error and do justice in appropriate cases.

42. Courts have held in numerous cases that the provisions for refund contained in the Court-Fees Act are not exhaustive and that they had inherent power to make an order directing the Taxing Officer to issue the necessary certificate "*to enable an appellant to apply to the revenue authorities* to obtain a refund of any excess fee paid on a memorandum of appeal.[60]" It is not easy to define the limits of the inherent powers of courts. It can be described generally as the residuary and latent powers of courts to be invoked in cases not covered by statute law, to prevent any injustice being done. It is submitted that it could not be used to render any express provision of statute law nugatory. But the invocation of this right by courts has led to a deal of uncertainty in refund of court-fees in appeals. It is obvious that where an appeal is withdrawn and consequently dismissed the appellant is not entitled to a refund of the court-fees paid on the Memorandum of Appeal.[60-a] But the decisions on this topic are not uniform. In one case[61] it was held that where a memorandum of appeal was returned for the rectification of a defect and was not re-presented after rectification but was withdrawn the court-fee paid thereon could be refunded. The court observed that its jurisdiction to order refund ceased only when the appeal was "filed," i.e., accepted by the office.[62] Where an appeal was instituted after the period of limitation and counsel argued in support of the appeal but the appeal was held time-barred, no refund was granted.[63] Where the appellant was given time to pay the additional court-fee and on his default, the appeal was dismissed, it was held there could be no refund.[64] An extreme case[65] is where refund was applied for after the appeal was "filed" and numbered. It was found in that case that the appeal was unnecessary and as no proceeding except the admission of the appeal had taken place, it was held that the court had jurisdiction to order a refund of court-fee *even though the case* did not fall within sections 13 to 15 of the Court-Fees Act.

43. No fixed principle could be deduced from these conflicting decisions which more or less follow the proverbial Chancellor's foot. Cases where refunds are prayed for and which are not covered by any provision under the Court-Fees Act could be classified thus: (1) Cases where excess court-fee has been paid by mistake or inadvertance, (2) cases where delay in presentation of appeals or re-presentation of plaints or appeals and the payment of deficit court-fee, if any, is not excused and the plaints or appeals are consequently rejected and (3) cases where the plaints or memoranda of appeals are returned for rectification of defects and are not re-presented as the proceedings are withdrawn either because the claims have been settled out of court or otherwise.

As regards the first kind of cases, even though there is no provision in the Act, it is but just and proper that courts should grant redress, where the payment of a higher

[59] 193⁶27 M.L.J. 788,
[60] 3 P.L.J. 452, 7 Lucknow 588, 40 Cal. 365, 7 Rangoon 88; 57 Mad. 1028 and 1934 Cal. 615.
[60-a] 1937 (2) M.L.J. 788.
[61] C.M.P. 1402 of 1933 (unreported—Madras High Court).
[62] For a detailed discussion of these decisions see Mr. Satyamurti Ayyar's commentaries on the Court-Fees Act, pp. 302–306.
[63] 22 I.C. 884.
[64] 6 Pat. 602.
[65] 7 Lucknow 588.

court-fee is due to a *bona fide* mistake and all courts have been uniformly exercising the power under their inherent jurisdiction. This may be put on a statutory basis.

As regards the second class of cases, the decisions are not uniform. Where on account of the delay in the presentation of an appeal or the re-presentation of a plaint or appeal or the failure to comply with the requisition and make good deficient fee, the plaint or memorandum of appeal is rejected, and not taken on file and numbered, it is but reasonable that the plaintiff or the appellant should be restored to the position he would be in, if he had not invoked the jurisdiction of the court, as he has failed to do so successfully. It may be noted that it was only for the sake of convenience, court-fees are collected in the shape of stamps under section 25 of the Act. If the institution fee has been collected in cash and if for any reason the court declined to take the proceeding on its file, it naturally follows, the purpose for which the payment has been made not having fructified, it should be refunded. Section 4 of the Court-Fees Act lays down that no document charged with fees shall be "received" or exhibited in any court unless the proper fee is paid. Therefore, at the outset, such insufficiently stamped documents ought not to have been *received* at all. It is because the receiving clerk in the office, for instance, could not obviously find out whether the papers presented are in order, before he received it into the office, such insufficiently stamped documents happen to be received. For the simple reason that what ought not to have been received, has been received by inadvertance, the person presenting the document should not be in a worse position by the document he presents being taken into the office than he will be in, if the receiving officer refused to receive it. The dismissal of the petition to excuse delay in presentation or re-presentation is tantamount to the presentation being not a proper presentation. If the presentation is not a proper presentation, then the appellant or petitioner is entitled as a matter of equity to be relegated to the position he would be in, if the officer had declined to receive his insufficiently stamped document even at the outset. It therefore appears proper that the appellant is entitled to the refund of court-fee paid by him in the shape of stamps and mutilated by the office.

At present the practice is for the court to grant a certificate to the effect that stamps of certain denomination have been filed and are not used leaving it to the party to move the revenue authorities for a refund. As observed by Mr. Justice Wallace of the High Court of Madras[66] "What the High Court really does is to decide judicially what is the proper court-fee and then issue a certificate to the party that excess court-fee has been levied. It still lies with the revenue authorities to decide whether or not they will refund the excess." It was held that in cases not falling under sections 13 to 15 of the Court-Fees Act, the revenue authorities are not bound to make a refund to the party even if he has obtained a certificate of the court and that in such cases the court has no power to order refund or to give a certificate to say that a party is entitled to it but can only certify that he has paid excess court-fee.[67] In an unreported decision[68] of the High Court of Madras Mr. Justice Burn held that he had no *power* to order a refund and directed the stamps to be returned with a certificate that they have not been used so that he may apply to the revenue authorities for a refund of the value. It seems inexpedient that the revenue authorities should be the final arbiter in such cases of refund. The certificate obtained by a party which he produces before the revenue authorities will reveal nothing except that court-fee stamps have been received in court and have been defaced and not used. The circumstances which led to the non-user are material and if at all anybody could judge of the expediency or otherwise of ordering a refund, it is obviously the court in which the court-fee was paid. When courts have been drawing freely on their inherent powers in the matter of refund, it is not clear, why in some cases, want of jurisdiction should stand in the way. It will be much more satisfactory to vest the power in the courts as has been exercised by them in several instances and to systematize the procedure and define the cases where refunds ought to be granted.

As regards the third class of cases, where the plaints or appeals are returned for rectification and are not re-presented and the plaintiff or appellant elects not to proceed further, obviously there could be no refund. In some unreported decisions of our High Court where the appellant represented that the delay in re-presentation need not be excused (C.M.P. Nos. 3292 and 3293 of 1934), where the appellant stated that he filed the appeal under a mistake (C.M.P. No 4600 of 1933), where the appeal was withdrawn after return for rectification of the defects (C.M.P. No. 1402 of 1933), and where the appellant represented that he was not able to pay the additional court-fee (C.M.P. No. 2139 of 1934 and C.M.P. No. 864 of 1934) refunds have been granted. But the decision whether refund should or should not be granted in these cases largely depends on the circumstances of each case.

[66] 55 Mad. 641 at p. 645.
[67] 57 M. 542.
[68] C.M.P. 1314 of 1933.

Even when the Court-Fees Act specified (vide sections 13 to 15) the cases under which refund is permissible, Courts have always enlarged their powers by drawing on the inherent powers under section 151. The courts ordered refunds in those cases on equitable considerations. But if the powers of court are enlarged by adequate provision being made in the Act there will be fewer occasions for courts to act under the inherent powers which must, as is generally understood, be resorted to only to remedy grave injustice.

44. A small detail may be adverted to regarding the discount due on amounts directed to be refunded. Where a refund is made on account of the several mandatory provisions of the Act, there will be no reduction but where a refund is granted by Courts under the discretionary powers a discount of one anna in the rupee may well be deducted.

45. Another class of cases for which there is no provision under the Court-Fees Act at present for a refund is where the suit is settled out of court. It is expedient to offer some incentive to parties to settle their claims out of court. Therefore, if before the time of the court is taken up in the trial of a suit, parties report settlement out of court, they should certainly be shown some concession as a refund of an adequate portion—say one-half of the court-fee paid on the plaint. This is also proper as the courts are saved the task of trying the suit. Similar provisions are found in the Presidency Small Cause Courts Act and in the City Civil Courts Act. This is also the recommendation of the Taxation Enquiry Committee, though their recommendations go to the extreme length of suggesting the levy of only a moiety of the fee at the time of the institution of the suit, leaving the other moiety to be collected at the stage of trial. The inexpediency of accepting that view has already been dealt with.

46. It might plausibly be urged that a concession shown in the case of suits settled out of court may be extended also to suits dismissed for default of prosecution or non-appearance of the plaintiff, or decreed *ex parte* in terms of a compromise arrived at between the parties. While it may be conceded that the quantum of work done by courts is less in such cases than in suits which are fully heard and adjudicated, still suits which are decreed *ex parte* or in terms of a compromise between the parties cannot be placed on the same footing as suits reported settled out of court. It should be remembered that the institution fee that is collected in a suit is fixed to cover not only the trial but also such later proceedings as execution, etc. It is the duty of the court to see that plaintiffs who get decrees should be helped to realize the fruits thereof. No doubt, certain fees are charged in execution proceedings as well, but they are comparatively small and do not bear any proportion to the labour involved in their adjudication. Claim petitions, enquiries under section 47, Civil Procedure Code, applications for rateable distribution, etc., are a few of such cases. Consequently, there is a great deal of difference between a suit which is settled out of Court and a suit which terminates in a compromise decree. In the one case, there is a final termination of all the proceedings while in the latter, it is not so. Further before a court could pass a compromise decree, it has to apply its mind and consider whether the decree could be sanctioned which is a statutory duty cast upon courts, when any of the parties are persons under disability, and it has also to scrutinize the terms and isolate those that relate to the subject matter of the litigation for the purpose of passing a decree. In the case of *ex parte* suits also, the court has to apply its mind and adjudge the tenability of the claims and pass a decree. This is again also subject to appeal and may also give rise to further execution petitions. Thus, it is clear that these cases cannot be put on a par with suits that are settled out of court which do not come up before courts afterwards for any purpose whatsoever. Further it may be noted that in the Presidency Small Cause Court and in the City Civil Court, refunds are granted only where the suits are settled out of Court. Where a suit is withdrawn, it is either because it is settled out of court or there is some defect in it when leave to institute a fresh suit is prayed for. In the latter case, there is the likelihood of another suit being filed and fresh court-fees realized. In the former case, it is almost equivalent to a settlement out of court and therefore, where there is a withdrawal before the framing of issues, with or without leave to institute a fresh suit, the concession of a refund could be granted. Where suits are dismissed for default of prosecution or for non-appearance of parties, there is no occasion to show any concession as the parties are defaulters.

47. It is therefore recommended that a refund of such adequate portion of the fee not exceeding one-half as the Government might be pleased to fix, may be granted in cases where a suit is withdrawn or reported settled out of Court at or before the first hearing, i.e., the framing of issues. It need hardly be stated that if refunds are granted in all cases where there is no full trial of the suit, it would result in an appreciable loss of revenue. And there is hardly any case made out for the grant of refund in cases other than those for which a refund is recommended. There is no available data regarding the amount of court-fee that may have to be refunded. If it is computed on the number of suits

settled out of Court at present, the figures may not be accurate for the existence of a provision for granting refund cannot but act as an incentive to parties to adjust their differences in a larger number of suits than now and avoid the tedium and trouble of a trial. How effective will be this inducement and what amount of court-fee may have to be refunded cannot be guaged accurately at present. Though this might result in some loss of revenue it is a salutary reform which is generally advocated. Several recommendations are made in this report, the adoption of which is likely to bring in adequate additional court-fee revenue and compensate the loss that must result by enlarging the scope of refund of fees as detailed above.

48. As already mentioned similar provisions exist in the Madras City Civil Court Act (Act VII of 1892). Section 13 of that Act provides that if a suit is settled by agreement of parties before issues have been settled or evidence recorded, half the amount of the institution-fee paid by the plaintiff shall be refunded. It is presumed that the recording of evidence referred to is evidence recorded *de bene esse* or on Commission *before* the settlement of issues. If the presumption is not correct there is no justification for giving the concession till the date of the recording of evidence. It is common knowledge that there is a fairly long interval between the settlement of issues and the trial of a suit. If the concession of the grant of refund of half the fee is made available till the date of the trial, it puts a premium on the dilatoriness of parties in the matter of coming to an amicable settlement early enough. Further, there are so many incidental applications which have to be heard and decided during the progress of a suit between the date of the settlement of issues and the trial, such as discovery, inspection, issue of commission and so forth. More important than all these will be the tendency on the part of litigants to postpone the trial of the suit as far as possible lest by the commencement of a trial, the chances of getting a refund may be lost. It therefore seems inexpedient to fix the date of the commencement of the trial of a suit for the purpose of refund. An analogy may also be drawn from the rules framed by the High Court regarding the fixation of pleaders' fees in the contested and uncontested scale. The contest is said to begin at the stage of framing the issues. It is therefore for consideration whether section 13 of the Madras City Civil Court Act may not be repealed and a similar provision for refund embodied in the Court-Fees Act which applies to the Madras City Civil Court also.

49. It is not possible to provide for cases where there is a settlement of a part of the subject-matter or as regards some of the parties alone. On grounds of expediency, it is considered proper to limit the privilege of getting a refund only to cases where there is a settlement regarding the *entire* claim.

50. There is no necessity for having a provision like this in appeals for the obvious reason that it is only in a trial court the proceedings are complicated and there is a prolonged hearing; witnesses have to be subpœnaed and the labour involved in *suits* are much more than in appeals. And further in the case of appeals, there are no different stages in the trial as in the original suit.

Chapter XII.—Suspension of the Levy of Fee.

51. At present, the only cases in which the collection of court-fee is either suspended or postponed are suits or appeals permitted to be filed in *forma pauperis*. Under Order 33, rule 1 of the Code of Civil Procedure a pauper is defined as "a person who is not possessed of *sufficient* means to enable him to pay the fee prescribed by law for the plaint." Courts take rather a liberal view of the incapacity to pay. Even where a person has got property if he is still unable to liquidate it or raise funds thereon he is considered eligible for the grant of leave to sue in *forma pauperis*.[69] Courts hold that it is not so much the question whether the plaintiff has the power to raise money in the abstract, but "whether in the concrete circumstances of the case, he could succeed in raising anything substantial by exercising it." Thus where there is even a temporary embarrassment and inability of the plaintiff to sell the property he may admittedly own or raise a loan on its security, he is considered a "pauper" and exempted from the payment of court-fee till the termination of the suit. Relief can be granted in such cases if Courts are empowered to grant time for payment of the fee and suspend the collection for such period as may be necessary taking in proper cases such security from the party as may be expedient. The Provincial Government has now power only to reduce or remit the fees provided in the Act. In Bengal, the power to suspend is also granted. A section corresponding to section 35-A of the Bengal Court-Fees Act may also be enacted here. It is also expedient to have a section corresponding to section 148, Civil Procedure Code, and in terms of section 34-A of the Bengal amendment.

[69] A.I.R. 1933 M. 883; A.I.R. 1934 M. 561.

52. In this connection it may not be irrelevant to refer to the rather unstisfactory state of the provisions relating to pauper applications. If the plaint discloses a cause of action and the petitioner is unable to pay the court-fees, the petitioner is entitled to leave to sue in *forma pauperis*. An effective method of qualifying for such inability to pay the fee is pursued by a plaintiff by exaggerating the claim to such an extent that his pauperism is placed beyond doubt. Such a petitioner has little to lose. Courts cannot refuse him leave even in patent cases where a bloated claim is simply bolstered up. Even if the suit appears to be a highly speculative one, courts are powerless to refuse leave. Such cases are not uncommon. Though the provisions relating to pauper applications form part of processual law, still in so far as they affect court-fee revenue, it is a connected topic and a reform thereof is essential in the interests of court-fee revenue. Courts should have power to refuse leave in cases where for any valid reason it considers it inexpedient to grant leave, even though the plaintiff establishes his pauperism. It should have powers to grant time for payment of court-fee even after the "filing" of the plaint or the memorandum of appeal, and to suspend collection of court-fee for any period on such terms as to security or otherwise.

PART III.—FEES LEVIABLE IN DIFFERENT KINDS OF PROCEEDINGS.

SECTION A.—SUITS.

CHAPTER XIII.—SUITS FOR MONEY.

53. It is a known fact that the adjudication of suits for the recovery of money takes much less time than suits relating to immovable property. They are also less intricate. Still it is recognized on all hands that the fee charged in such cases is heavy. Further, several anomalies exist in the matter of collection of fees in money suits in the mufassal courts. There is a concessional rate of fees for small cause suits and suits of a small cause nature, of Rs. 500 and below, in value. Again in suits of the value of between Rs. 500 and Rs. 1,000 the fee that may have to be paid depends on the accident of a Subordinate Judge having small cause jurisdiction over the area in which the cause of action arises. If so, they could be filed as small cause suits with a lower fee. Else they will have to be filed as original suits in the District Munsif's Court and higher fee paid. The bulk of the litigation in the mufassal courts is for small amounts and there is no denying the fact that they stand in need of relief. To some extent the loss of revenue that would result in a lowering of the scale of fees in money suits of lower denomination can be compensated by a graduated enhancement of fee for higher values. This re-adjustment of the scale of fees in the case of money suits is an overdue reform. As it is, it tells very heavily on the poor litigant and is considered a great hardship. It is therefore recommended that the *ad valorem* scale for claims which do not exceed Rs. 1,000 or for the first Rs. 1,000 where it exceeds that amount, may be reduced from 11¼ per cent to 7½ per cent. Even now for suits of that value which are small cause suits and for suits not exceeding Rs. 500 in value, which are of small cause nature the rate levied is only 7½ per cent. Consequently this reduction will affect only the fees levied on claims other than small cause suits, and suits of small cause nature of value up to Rs. 500. The decrease of revenue consequent on this recommendation is estimated to be Rs. 6½ lakhs—vide Appendix II. This estimate does not cover any deficit of fees in the case of money claims in revenue courts which of course will be comparatively much less than in civil courts. To compensate this loss of revenue to some extent it is recommended that suits of the value of Rs. 10,000 and over may be assessed at a flat rate of 6 per cent. At present the assessment is on a graduated regressive scale. But there are very few suits of the value of over Rs. 10,000 and the levy of an increased rate of fee will not tell upon the richer class of litigation. Further it is also advantageous to have a flat rate dependent solely on the value of the claim and this slight increase is also justified for giving the much needed relief to the poor litigant. Even this increase of fees in suits over the value of Rs. 10,000 will not bring an appreciable revenue as the increase expected from this is only about a lakh of rupees. Consequently the acceptance of the above recommendation will result in a shrinkage of the income by about 5 lakhs of rupees or thereabouts. Still this relief to money suits below the value of Rs. 1,000 which form the bulk of the litigation is a just and equitable concession and there is a remarkable consensus of opinion that the present rate of fee presses rather heavily on such litigants. There need be no apprehension that the revenue will be reduced for there are several other recommendations in this report, namely, those regarding the levy of a proper fee in suits relating to immovable property and for the levy of fees in several other proceedings which are now escaping with the payment o fa nominal fee and other recommendations which are expected to act as an effective check on the evasion of the payment of the proper court-fee. These additional sources of revenue, the enhancement of the fee in proper cases and the stiffening of the provisions of the Act to prevent a leakage of the revenue will, it is hoped, compensate for the loss that would result by effect being given to the above recommendation.

54. The lowering of the scale of fees is to apply only to suits and not to appeals as it cannot be contended that the same concession should be shown to an appellant who had his claim already adjudged by the court of first instance. Appeals cannot be placed on the same footing as suits. Moreover, if the concession is applied to appeals as well, the reduction of revenue will be at least 50 per cent more than the estimate given above. Further the subject matter of appeals is generally not co-extensive with those in the suits and the present scale of fees cannot therefore be considered so much a hardship in appeals as in suits.

It need hardly be observed that there is no incongruity in different scales of fees being levied in suits and appeals as obviously different considerations prevail in the fixation of fees in those cases. Even now in the case of suits of a small cause nature, the rate of fees leviable in suits and in appeals is different. Where fixed fees are levied the rate is different in the case of second appeals. A litigant has not got the same right to invoke the appellate jurisdiction of a court as he has got to initiate proceedings in the first instance.[70] These and several other factors clearly indicate that suits and appeals have to be considered from different standpoints and there is therefore nothing illogical in different scales of fees being levied in appeals and suits. It is therefore recommended that the fees now levied in appeals need not be altered and the enhancement and reduction suggested above may be made applicable only to suits.

CHAPTER XIV.—MORTGAGE SUITS.

55. The fixation of fees in the case where a sub-mortgagee seeks to enforce his right in the mortgage property standing in the shoes of the mortgagee, has been felt to be rather a difficult problem.

This is a right which, it is admitted on all hands, the sub-mortgagee has. If he files a suit on his sub-mortgage, should he value it on the amount which he seeks to recover on the sub-mortgage in his favour, or should he value it on the amount of the mortgage which is sub-mortgaged to him. It is held by our High Court [71] that when a sub-mortgagee sues for sale of the properties mortgaged to his mortgagor, i.e., the original mortgagee, impleading the original mortgagor, he is enforcing the right of the original mortgagee by virtue of the transfer in his favour and the plaintiff-sub-mortgagee must, in such a case, pay court-fee on his plaint on the amount due on the original mortgage and not on the amount due and payable in respect of his sub-mortgage. At the outset, it might be considered inequitable that where a person having a mortgage for Rs. 10,000 sub-mortgages his mortgage right for Rs. 1,000 and the sub-mortgagee files a suit to enforce the sub-mortgage in his favour, the latter should be equated to the mortgagee and be asked to pay court-fees not on the amount due to him under the sub-mortgage which may be about Rs. 1,000 and odd, but on the amount of the mortgage sub-mortgaged to him which may be to the extent of Rs. 10,000 and odd. In this case the sub-mortgagee suing simply for enforcing his claim is also litigating on behalf of the original mortgagee. His only consolation perhaps is that all these costs will be realized by him as a first charge on the hypotheca. Anyhow, it is logical to come to the conclusion that the sub-mortgagee if he desires to realize the mortgage security cannot but stand in the shoes of the mortgagee to enforce his rights. If this is considered to be a heavy task, nothing prevents the sub-mortgagee from suing the mortgagee alone or praying for the sale of the mortgage which is his security instead of going a step further and liquidating the mortgage right and getting the hypotheca converted into fluid cash. There is the analogous case where a stranger purchaser of the share of one of the co-parceners in an item of joint family property, cannot sue for division by metes and bounds of that item alone in which he is interested, but has to stand in the shoes of the co-parcener and work out his vendor's rights in a suit for general partition. There is no doubt that the correct legal view to take is only as set out in the above quoted decision of our court.

56. Of course, there are also other difficulties that may suggest themselves. For instance, if there are a number of mortgages which are sub-mortgaged to the plaintiff, then the sub-mortgagee will be put to the necessity of paying court-fee which would have been payable on every one of those mortgages sub-mortgaged to him as if suits were

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[70] Cf. 0·41, rule 11, C.P.C.; 0·44, rule 1, C.P.C.

[71] 1938 (1) M.L.J. 171.

filed on them separately. A further complication might arise where in addition to the several mortgages, certain items of properties are also mortgaged to the sub-mortgagee. In that case, the plaintiff will be a sub-mortgagee in respect of some properties and a mortgagee in respect of other properties. Logically, if the plaintiff is asked to pay the court-fee which would have been payable in a suit on every one of those mortgages on the principle that the plaintiff stands in the shoes of the mortgagee and works out his rights, what is the value and court-fee for the relief which the plaintiff seeks to get by way of a mortgage decree against those items of hypotheca which are not subject to any mortgage and mortgaged to the plaintiff alone. It will be extremely hard to push this argument to its logical conclusion and call upon the plaintiff to pay for getting a decree against those items of hypotheca which should again be valued according to the value of the sub-mortgage, and add it on to the court-fee which the sub-mortgagee has to pay for the realization of the amounts due under the other mortgages mortgaged to him. One realizes the extreme complexity of such cases and it is only possible to devise a method of computation that will be generally satisfactory. Though one is conscious of a hardship in stray cases where a number of mortgages are sub-mortgaged to a single individual, if the sub-mortgagee is interested only in a comparatively small amount, viz., the mortgage in his favour, it is for him not to enforce his larger right of standing in the shoes of the mortgagee and realize the mortgage security but to treat the mortgage debt itself as the subject matter of the litigation and bring that to sale in which case, it is clear that the sub-mortgagee as plaintiff need only pay a fee calculated on the amount due under the sub-mortgage.

57. In the case of co-mortgagees, if a suit is filed by one of them for the benefit of himself and the other co-mortgagees who are impleaded as defendants, it is clear that a plaintiff cannot state that he is entitled to a fractional amount of the mortgage and that he will pay court-fee only on that amount. A mortgage is whole and indivisible. It gives rise to a single cause of action and the only course that could be adopted is a suit by all the co-obligees or by one of them on behalf of all. The law does not recognize the right of a single obligee to sue for his fractional share. Consequently, where a co-mortgagee files a suit and prays for a decree for himself and the other mortgagees—as he ought to—he is bound to pay court-fee on the entire mortgage claim.[72] That is why the Suits Valuation Rules Committee observes that even a co-mortgagee "*seems to be placed in the same advantageous position*" as the defendants in partition and partnership actions.

58. Another point to be considered is where there are successive mortgages and one of the prior encumbrancers files a suit impleading the later encumbrancers, as he is bound to do and the hypotheca is sold, which results in the several mortgagees in the chain getting their dues without the trouble of filing a suit and paying court-fee thereon. But this is an inevitable result. In the Note appended to the Suits Valuation Rules Committee's Report it is remarked that fees cannot be charged from any puisne encumbrancers for the reason that an *ad valorem* fee is paid by the plaintiff and under the substantive law and procedure, questions relating to all the mortgages will have to be investigated. If a mortgagee institutes a suit for sale, anyhow, the property will have to be sold and the surplus sale proceeds will have to be paid to the mortgagor if there is no puisne mortgagee. It is therefore reasonable that a puisne mortgagee should not be compelled to pay court-fee on the value of his claim. Though to some extent, puisne encumbrancers are thus in a fortunate position, it is apprehended it cannot be helped, for, the Act taxes only services rendered to a person who seeks its aid and cannot rope in everybody who is incidentally benefited. But there might arise cases where it is not an incidental benefit that they get, which necessarily flows from the grant of relief to the plaintiff who pays for it, but one flowing from the adjudication of disputes between the mortgagor and puisne encumbrancers, or puisne mortgagees *inter se*. This is a quarrel between the defendants with which the plaintiff has nothing to do. None of the defendants quarrel with the claim of the plaintiff or his right to be paid as a first charge on the hypotheca. But if regarding the surplus, the mortgagor disputes the amount due to the puisne encumbrancers or if there are more than one such puisne encumbrancer, there is a dispute regarding the validity and binding character of one of the mortgages or the amount due under the mortgage, then, they are different matters that are adjudicated in the single mortgage suit itself for convenience and for avoiding multiplicity of suits. Nothing prevents the court from passing a mortgage decree in favour of the plaintiff and paying him his dues, lodge the balance of the sale proceeds of the hypotheca in court, and leave it to the several contesting parties—the puisne encumbrancers and the mortgagor—to fight out their battle as to the apportionment of the amount. But if such an adjudication is sought in a suit by one of

[72] The view to the contrary in 59 M.L.J. 928 seems to be shaken in view of the later decision in 44 L.W. 502 and (1937) II, M.L.J. 666 at pp. 669–672.

the mortgagees and issues are framed between the defendants about the validity of the mortgages in their favour, the amount due to them thereunder, or priority of the several mortgages it is but proper to levy court-fee in respect of such claims. To illustrate: Suppose there are two puisne encumbrancers—second and third mortgagees and a mortgagor. The third mortgagee may contend that he has got priority over the second mortgagee. Then, this is a live issue between the second and third encumbrancers regarding the question of priority. This will have to be treated as a declaratory suit filed by the third mortgagee against the second mortgagee and valued as such. Suppose again the mortgagor states that the second mortgagee has been paid off in whole or in part and that nothing is due to him or that a smaller amount is due to him. In that case, the second mortgagee is not entitled as matter of course, to get payment out of the sale proceeds of the hypotheca available and has to establish his right to the amount due to him. He has to invite the court to adjudge his claim as against the mortgagor. And consequently it is but proper that he should pay the fee calculated on the subject-matter in dispute. The only concession that he gets is that if he were filing a suit on his claim it is to be the fee on the entire amount due to him and now the fee is assessed on the value of the subject-matter in dispute.

59. To sum up, the following recommendation is made for the levy of fees in this class of suits. If the hypotheca is subjected to successive encumbrances, and the first mortgagee or one of the earlier ones files a suit on his mortgage, the inevitable result follows that the hypotheca is sold and the plaintiff is paid his amount and the balance is paid into court. That amount is impressed with the rights of the several mortgagees. If there is no controversy between them, the course is quite open to them to draw out the respective amounts due to them and the balance, if any, will be paid over to the mortgagor. Here, the policy may be accepted that even though these mortgagees are enabled to get the claim liquidated without raising their little finger, they can be permitted to do so without the payment of any court-fee because there has been no necessity to adjudicate upon their claims, for, there is no controversy. But this principle cannot be extended to cases where there is a real dispute between the puisne encumbrancers or between any one or all of them and the mortgagor. In such cases, this is quite a different litigation altogether and certainly not one in which the plaintiff in the mortgage suit is interested. Therefore, it cannot be said in cases where the court has to decide these supplementary items of quarrel, between the defendants, that it is the necessary concomitant of a mortgage suit which the court is bound to decide. Courts are not bound to decide questions relating to all the mortgages. For, it is open to it to decree the plaintiff his claim and decline to adjudge the relative claims of the defendants which do not affect the plaintiff's case. Therefore, it is suggested that where such claims of puisne encumbrancers arise for decision court-fee should be collected on those claims. If a puisne encumbrancer challenges the alleged rights of priority of the holder of a mortgage bearing a prior date he is to pay court-fee as in a suit for declaration, the value of which would be the amount due on his mortgage or the amount due on the mortgage which is sought to be postponed, whichever is less. Where the amount due on a prior mortgage is disputed either by subsequent mortgagee or by the mortgagor, court-fee is to be paid on such amount in dispute, and this can be collected from the holder of the mortgage, the amount due on which is disputed, at the time of settlement of issues.

CHAPTER XV.—SUITS FOR REDEMPTION OF MORTGAGE.

60. Suits against a mortgagee for redemption and suits by a mortgagee for foreclosure or where the mortgage is made by conditional sale, a suit to have the sale declared absolute—these are covered by section 7, paragraph IX of the Court-Fees Act and are valued at the principal money expressed to be secured in the instrument of mortgage.

61. Regarding suits for redemption, it must be obvious that the logical method of valuing them is to assess them at the value of the equity of redemption. As defined in the Transfer of Property Act,[73] a mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan. The mortgagor is the owner who has parted with some rights of ownership and the right of redemption is a right which he exercises in virtue of his residuary ownership to resume what he has parted with. Therefore, where a mortgagor says that he is prepared to pay back the amount due by him in respect of that advance and prays for redemption, the value of the suit must be the value

[73] Section 58; see also 21 B. 226.

of the equity of redemption; the entire value of the property mortgaged minus the amount which the mortgagor-plaintiff says he owes under the mortgage. It may be in rare instances that the amount due by the mortgagor to the mortgagee is only the principal sum but in almost all cases, it is more, or less, than the principal amount. Consequently, the fixation of the value of redemption suits as the principal amount secured by the mortgage is only an arbitrary rule. It is not logical, because the true value of a redemption suit is the value of the equity of redemption, nor is it correct in the sense that in almost all cases where a mortgagor has been paying interest and something towards the principal, the amount due by him is less than the principal advanced and where a mortgagor has defaulted in the payment of interest, the amount due by him is more than the principal advanced. While the valuation is felt not to be quite logical, there is no better alternative. It is perhaps for that reason this provision has not been amended or modified by any of the Provincial Legislatures so far. If the alternative of valuing the equity of redemption is considered, there may be cases where property worth Rs. 10,000 might have been mortgaged to secure a debt of Rs. 1,000. If a suit for redemption is to be valued on the equity of redemption, it should be valued at Rs. 9,000 which will hit the suitor pretty hard. It will also be equally hard if a person who has borrowed Rs. 1,000 and has repaid all the interest and major portion of the principal, viz., Rs. 900 and offers to redeem his property by paying the balance of Rs. 100 should be asked to value his suit at Rs. 1,000, the principal amount secured by the mortgage. On the other hand, if a person borrows Rs. 1,000 and does not pay interest at all and the principal and accumulated interest amounts to Rs. 2,000 and he seeks to redeem his property by offering to pay the sum of Rs. 2,000; that he should be asked to pay only on the value of the original mortgage amount, viz., Rs. 1,000 may result in letting him off a bit cheap. In the view set out at the outset, it would rather be the value of the equity of redemption that is the real value in a suit for redemption. If suits are directed to be valued that way, it would result in this that a mortgagor who has paid off the entire mortgage amount and sues for redemption, the equity of redemption would, in his case, amount to the entire value of the property and a suit for redemption will be on a par with a suit for recovery of possession. And where the hypothecа is ryotwari land the fee for a suit for redemption may even exceed the fee in a suit for possession. In the case of suits for cancellation of documents securing payment of money, the value of the relief sought is according to the principal amount secured thereunder, without reference to the actual amount that may be due under the document on the date on which cancellation is sought. A suit for redemption may also be construed as one praying for the extinguishment of the mortgage. If that is treated as akin to the cancellation of the instrument (though strictly not so), the principle of valuation in suits for cancellation may be adopted in the case of suits for redemption. Consequently the existing method of valuing such suits at the principal amount secured may be continued.

62. In the case of the redemption of an usufructuary mortgage where the mortgagee has to account for the rents and profits received from the hypotheca in his enjoyment, the plaintiff who prays not only for redemption but also for accounts of surplus profits being taken has been held[74] not liable to pay for the latter relief. This decision is based on the fact that the mortgagee in possession is under a statutory liability to account. But where the right to redeem is quite distinct from the claim for surplus profits the reliefs are quite different and they have to be valued separately. The assistance of the court is sought in the matter of the investigation of the accounts that may be rendered by the defendant-mortgagee and as a result of the account-taking, the plaintiff prays for a decree for a specific sum of money. Of course as in a suit for accounts, he values the amount only approximately. If it so happens that a decree is granted in excess of what he assessed his relief at, the procedure that is to be adopted in suits for accounts must also be followed in this case. It is therefore necessary to specifically provide that in such suits the two distinct reliefs must be valued separately.

63. Though the mortgagee's right of foreclosure or sale is co-extensive with the mortgagor's right of redemption, still for the purpose of assessing the valuation of a mortgagee's suit, a different principle has to be followed. Now such suits are valued at the principal amount secured by the mortgage. A suit for foreclosure is to obtain an order that the mortgagor shall be absolutely debarred of the right to redeem the mortgaged property. This is, at any rate, not inferior to a suit for the recovery of money due under a mortgage. The plaintiff instead of suing for the amount under the mortgage, prays for an order that the mortgagor be declared debarred of his right to redeem the property. That is, the plaintiff claims to be declared the absolute owner of the property unless within a time limited, the mortgagor exercises his right of redemption. In a suit on a simple mortgage for sale, the mortgagee brings the property to sale and gets himself paid the mortgage money. Here, in lieu of the mortgage money, he appropriates the entire hypotheca.

[74] 60 M.L.J. 698.

Therefore, there is no reason why such suits might not be made to correspond in value to mortgage suits wherein sale of the property is prayed for. In fact, in Central Provinces, such suits as also suits where the mortgage is made by conditional sale and the sale is sought to be made absolute, the value is the amount claimed as due on the date of presenting the plaint. Similar provisions are found also in the amended Court-Fees Act in the United Provinces.

64. It is therefore recommended that in the case of suits for foreclosure and in suits where the mortgage is made by conditional sale, it is sought to declare the sale absolute, the value of the suit will be according to the amount claimed as due on the date of the presentation of the plaint. This is suggested in the Select Committee's Report[75] at the time the Suits Valuation Bill was introduced. There they say, "In a suit for foreclosure or sale the principal and interest due under the mortgage deed represent the value of the suit for purposes of jurisdiction, while the value for the computation of court-fee is the principal money." There is no justification for having a valuation for jurisdiction different from the valuation for court-fees in such cases.

65. Kanoms in Malabar form a distinct class by themselves. For want of a special provision in the Court-Fees Act for a suit for recovery of possession of property held on kanom, such a suit is treated as an ordinary suit for redemption of a mortgage and valued under section 7, clause (ix) of the Act at the principal amount of the kanom, and this practice has obtained judicial recognition. But a kanom is something more than a mere usufructuary mortgage. It is also a lease. It is even something more than a mortgage and lease combined, inasmuch as the kanomdar is entitled to the value of improvements on eviction—a feature not found in ordinary mortgages or leases. Further, unlike the mortgage amounts in ordinary mortgages, the kanom amount does not in most cases bear any proportion to the value of the property. It is usual to find kanoms securing such small sums as Re. 1, while the demised property may be worth thousands of rupees. Even one year's rent for the property would often exceed the kanom amount. Not infrequently at the end of twelve years, the landlord renews the kanom to the kanomdar or his heirs, and the value of the accumulated improvements made—trees grown and buildings constructed—by them, will be worth several times the value of the property as it was when first demised to the kanomdar. Again, at the time of the original kanom and at the time of its renewal, the landlord receives as consideration from the kanomdar not merely the kanom amount secured on the property but frequently also a premium and also a renewal fee. The value of a suit for possession of property on kanom is therefore often illusory or nominal and is no index of the time and labour necessary for its disposal. As in a suit for redemption of kanom in the civil courts, the Registration department till now charged fees for registration of a kanom document only on the amount of the kanom. But under the rule-making powers conferred by section 78 of the Registration Act, the Government have[76] made a new rule to the effect that "in the case of a kanom deed, fee shall be levied on the total consideration, viz., the aggregate of the amount consisting of the advance, the premium or the present called '*manusham*' in North Malabar and '*avakasam*' in South Malabar, the annual rent reserved, and the ascertained amount of compensation, if any, for improvements." Therefore, the proper method of valuing such a suit will be to treat it as a suit for redemption and a suit for ejectment and recovery of rent. For the relief of redemption, the value will of course be calculated as any other suit for redemption on the kanom amount. The relief of ejectment should be valued at one year's rent plus any premium that might have been received.[77] Then, the rent sought to be recovered is a definite amount and if a decree is sought for same, court-fee should be paid thereon.

66. Before the passing of the Malabar Compensation for Tenants' Improvement Act (I of 1900), it was held[78] that for redemption of kanom and arrears of rent suits should be valued at the aggregate of the kanom amount and the amount of arrears of rent claimed. But later on, the view was taken[79] that since under section 6 of that Act, in a suit for redemption and recovery of arrears of rent and damages, the plaintiff's claims for arrears of rent and damages were in *pari materia* with the defendant's claim for unascertained improvements and the former could be set off against the latter, court-fee need be levied only on the balance, if any, due to the plaintiff after the improvements were ascertained and set off. Since the value of improvements made for years or generations would invariably exceed the rent claimed, this means in practice, that no court-fee will be levied on the claim for rent. Thus it comes to this: that if the plaintiff sues for rent alone without redemption, as he

[75] Extracted in Mr. Satyamurti Ayyar's commentaries on the Court-Fees Act, third edition, p. 868.
[76] G.O. Ms. No. 231, Law (Registration), published in the *Fort St. George Gazette* of 9th December 1931.
[77] See section 7, clause X (c) of the Court-Fees Act.
[78] 16 M. 415; 328.
[79] 50 M.L.J. 493.

very well can, since the two contracts are distinct, he has to pay court-fees for it, but that if he joins in the suit a claim for redemption also, he need not pay court-fee for the rent claimed. In the latest decision on the point[80] it is held that the Plaintiff's claim for damages is in *pari materia* with the defendant's claim for improvements and that no court-fee is payable at all for the former claim but the question whether the claim for rent also stands on the same footing was left open.[81] But still the plaintiff may, if he chooses, deduct what, according to him, is the value of improvements payable by him from his claim for rent and pray for a decree only for the balance.

67. Where the plaintiff sought to set off the kanom amount due *by* him against the lease amount due *to* him from the mortgagee, he has been permitted to do so,[82] but this decision cannot be accepted as the plaintiff did not even set off any definite amounts due to him against the kanom amount due by him but simply filed a suit as one for accounts requesting the court to ascertain what are mutually payable by the parties, strike a balance and make the plaintiff liable only for the balance. This is not the proper method at all to be adopted. The cause of action for the redemption on the basis of the kanom construed as a mortgage and the cause of action for ejectment and collection of rent on the basis of a tenancy are quite distinct.[83] Therefore, in order to avoid any possible doubt regarding the valuation of suits on the above basis, it is expedient to set out the approved method of valuation in drafting the relevant sections. Regarding the claim for rent, the plaintiff can set out tentatively the amount he will be liable to pay to the defendant deducting the same from the rent due to him and pay court-fee on the balance claimed. If a decree for a sum in excess of what is claimed is passed, additional court-fee on such excess amount decreed in his favour will become payable. The provisions relating to a suit for accounts will then apply to this case.

Chapter XVI.—Suits relating to Maintenance, etc.

68. Section 7 (ii) of the Act provides for valuation of suits for maintenance and annuities. According to that section a suit for maintenance is to be valued at one year's maintenance and a suit for annuity at ten times the amount of annuity. This concession granted in the case of suits for maintenance on grounds of policy was being availed of till recently also in the case of suits for enhancement or reduction of maintenance fixed by a previous decree. Though a suit for enhancement of maintenance may in one sense be classed as coming within the category of suits for maintenance, a suit for reduction of maintenance cannot be classed as such and a recent decision of our High Court has made this clear and it has been held [84] that such suits should be treated as incapable of valuation for court-fees though they should be valued for purposes of jurisdiction at the present value of the probable future payments sought to be avoided, calculated according to the actuarial tables in use by Life Assurance Companies, having regard to the age of the plaintiff. It may be considered illogical to hold that such suits are incapable of valuation for court-fee but capable of valuation for jurisdiction. If it can be valued by any standard, Schedule II, article 17-B cannot apply even though there is no provision in the Act relating to such a suit, and the suit will be governed by the other residuary provision in Schedule I, article 1 according to which *ad valorem* fee is payable on the value of the subject-matter of the suit. It is, however, very difficult to assess the value of a suit on the method suggested in the above decision. It is, therefore, desirable that these difficulties should be solved by the enactment of a special provision by which a suit for reduction of maintenance may be valued at ten [85] times the amount by which the annual maintenance is sought to be reduced. There is no need to extend the concession granted in the case of plaintiffs seeking to establish their right to maintenance to plaintiffs seeking to reduce the maintenance once granted. Even as regards suits for enhancement of maintenance, it is recommended that they may be placed on the same footing as suits for reduction of maintenance because the plaintiff had been already granted some maintenance and the concession of valuing at one year's maintenance need not be given when that maintenance is sought to be enhanced.

Chapter XVII.—Suits relating to Movable Properties.

69. When the principle is accepted that the value of the subject-matter of a suit means the market value of the property involved in it there is no difference in the method of the levy of fees in the case of movable and immovable properties. It has been recommended

[80] C.R.P. 666 of 1931 (not reported).
[81] Some doubt seems to be thus thrown on that aspect of the decision in 50 M.L.J. 493.
[82] 19 Mad. 16.
[83] 16 M. 415; 328.
[84] 59 Mad. 159 = 69 M.L.J. 202.
[85] The actual multiple is for Government to decide on.

that the proviso to section 4 (*c*) of the Court-Fees Act which fixes a minimum valuation in suits relating to immovable properties should be extended to movable properties as well. Therefore, the only case where there has to be special provision relating to movable property is where it has no market value, as for instance, documents of title. At present, suits for the recovery of such properties are valued by the plaintiff as he chooses—vide section 7, clause iv (*a*). A plaintiff naturally pitches the value as low as possible and consequently, a ridiculously small amount is paid as court-fee. As already remarked, there is no difficulty about properties having a market value even though that may not in all cases be the intrinsic value. There may be articles which have a historical value and hence a value out of all proportion to the intrinsic value of the object. The difficulty arises only in the case of those movables which have no value to the general public and therefore cannot command a price in the market but which to a certain person or body of persons might be of great value. In such cases, the question for consideration is whether the plaintiff can be permitted to be the sole assessor of such value. Where suits are filed for possession of movables which have no market value, it is, of course, necessary that they should be valued, else courts will not be able to grant a decree in the alternative for any specific sum of money in case the defendant is not able to surrender possession of the movables the recovery of which is sought. From this it would appear the only proper method will be to give the plaintiff liberty to value the relief as he chooses as in the absence of the recovery of the movable property, he will be getting the amount which, according to him is the value of the property. But a special provision has to be introduced in cases where, what is sought to be recovered are documents, which "secure right to money or to any other properties having value"—for instance, negotiable instruments or documents of title. It is obvious that the plaintiff should not be given liberty to value these documents at any trifling amount as he chooses, irrespective of the amount or the value of subject-matter to which those documents relate. While on the one hand, it may be hard if such a suit is to be valued at the value of the subject-matter covered by the document or to which the document relates, it will equally be inexpedient to permit a plaintiff to put any value he chooses on such documents. For instance, in a decision of our court [86], the suit was for a declaration that a promissory note standing in the name of the defendant was *benami* in his name for the plaintiff and for recovery of the promissory note. It cannot be denied that in substance, this is a suit for declaration of the right to the amount covered by the promissory note and still advantage was taken of the existence of a provision in the Court-Fees Act for the recovery of movables having no market value and an insignificant amount was put as the value of the suit which necessitated the trial of the conflicting claims of two persons relative to a negotiable instrument. But for the provision—Section 7, clause (iv) (*a*) in the Court-Fees Act,—the suit would have been taxed as a suit for a declaration with consequential relief.

Of course, in the case of immovable properties that have no market value, for instance, a temple, it was held [87] that the subject-matter was incapable of valuation. By analogy, it might perhaps be considered that movable properties which have no market value can as well be classified under suits where the subject-matter is incapable of valuation and assessed to a fixed fee. But it is not quite correct to say that everything that has not got a market value has no value at all to the plaintiff. There may be family heirlooms—a jewel, the portrait of an ancestor, an article of family worship or even a mascot on which a plaintiff might fix a high value out of all proportion to its intrinsic value. There is no reason why if the plaintiff chooses to value it at a high figure, he should not be made to pay an *ad valorem* fee according to his own estimate and should be let off with a fixed fee which may be excessive in certain cases and inadequate in others.

70. It is therefore suggested that while the plaintiff may value such properties which have no market value at any figure he chooses, if the subject-matter of the suit happens to be documents either securing (i.e., creating, declaring or extinguishing) a right to money or to any other property of value and if the suit also involves an adjudication regarding the title of the plaintiff to the money or the property secured by that instrument, the suit should be valued as in suits for declaration and the court-fees may be levied on the amount or value of the properties secured by the document.

Chapter XVIII.—Suits relating to Immovable Properties

71. For a long time it has been recognized that there is a great disparity in the incidence of court-fee in suits for money and those relating to immovable property. The court-fee leviable in a suit for recovery of a specific amount or movable property worth the same amount must obviously be the same as in a suit for the recovery of immovable

[86] 67 M.L.J. 680.
[87] 1924 A.I.R. (Mad.) 19.

property of equal value. As the scheme of valuation in both classes of cases is the same, i.e., on an *ad valorem* scale the collection of a smaller amount as court-fee in suits relating to immovable properties cannot be due to any difference in the principle of levy. It is only the result of the unsatisfactory method of computing the value of immovable properties.

72. Different methods are prescribed for assessing the value of different kinds of immovable property. While a building worth Rs. 1,000 has to be valued at that amount, in the case of lands worth the same amount the valuation is fixed at either the market value, or a multiple of the kist, or of the net mesne profits. When there is no doubt that the *value* of the subject-matter is the criterion for the assessment of the fee, it is obviously a matter of minor importance how that value is to be ascertained. A rule of thumb method may well have the merit of simplicity but it is worthless when it is misleading and erroneous. The working of the method of computation of value leads to several practical difficulties and anomalies.[88] This matter has also been adverted to in the Taxation Enquiry Committee's Report.[89] They characterize the provisions as arbitrary and refer to instances where it leads to the absurd result that a suit for part of a field has to pay a higher fee and be tried by a court of higher jurisdiction than a suit for the whole field.[90] The Indian Taxation Committee Report further states that the scheme of valuation of lands according to assessment makes the fees arbitrary and uneven. Thus suits for lands though they are generally more hotly contested than suits for money or movables, pay a lower court-fee than the latter do. Moreover, the method is inconsistent with the method adopted for the valuation of lands in cases of appeals to the Privy Council. It is unnecessary to labour the point further because it must be admitted on all hands that the statutory value prescribed in the Act for immovable property certainly falls very short of the real value of the property. The question naturally arises why this artificial valuation which is far from being the true one should be perpetuated. It may be that the statutory value reflected the true value at a time when these provisions were enacted. Whatever that may be, at present there is no denying the fact that the statutory value is a mere empirical and incorrect valuation of immovable property and there is no justification for perpetuating this fiction further. The Court-Fees Act enacted in 1870 prescribed the several methods of computation as set out in section 7, clause (v). Shortly thereafter Act III of 1873, viz., The Madras Civil Courts Act, was passed. Section 14 thereof determines the jurisdiction for suits relating to immovable property. It lays down that when the subject-matter of suit or proceeding is land, a house or a garden, its value shall, for the purposes of the jurisdiction be fixed in the manner provided by the Court-Fees Act, section 7, clause (v). It was anticipated that this would result in the jurisdictional value of such suits becoming far less than the intrinsic value of the property. This aspect has been stressed upon in the introductory speech of the Hon'ble Mr. Ilbert while moving the Suits Valuation Bill which became an Act in 1887. He observed that under "the rules laid down in the Court-Fees Act, land is, in many parts of the country, including the *Madras Presidency, assessed at something very much below its net market value*" and that "the effect of applying the court-fees rules for the purpose of determining jurisdiction is to bring within the jurisdiction of some of the inferior courts land-suits of a class which those Courts were not intended, and indeed are not qualified, to deal with." The Government of Madras desired to substitute some other rules which would bring out the valuation more in accordance with the facts. The wishes of the Madras Government were met by the Imperial Legislature by authorizing Local Governments to frame rules for determining the value of land for "jurisdictional purposes." It was also declared that if the Madras Government thought fit to frame such rules, the rules will, when they come into force, supersede the provisions of the Madras Civil Courts Act above referred to. Section 3 of the Suits Valuation Act was enacted which gave the Local Government power to frame rules for determining the value of land for purposes of jurisdiction under section 7, clauses (v), (vi), and (x) (*d*) of the Court-Fees Act. That rule-making power which the Local Government sought for and obtained from the Central Legislature as early as 1886, is still a weapon unused in its armoury. No rules have been framed as yet. When our Provincial Legislature passed the Madras Court-Fees Amendment Act of 1922, they increased court-fees all along the line by imposing a surcharge of 50 per cent. Then they added a proviso to section 7, clause (v) of the main Act of far-reaching importance and what really amounted to nothing less than a complete change in policy. It was to the effect that if rules are framed under section 3 of the Suits Valuation Act, for determining the value of land for the purposes of jurisdiction, *the value so determined shall be deemed to be the value of the land for the purposes of section 7, clause (v), i.e., for court-fees.* Thus the local Government demolished by a single stroke the distinction between value for court-fee and value for jurisdiction. Even at the time

[88] Satyamurti Ayyar's commentar es on the Court-Fees Act, p. 21. [89] Paragraph 240.
[90] For a full discussion of this topic see Mr. Satyamurti Ayyar's Court-Fees Act, pp. 154 to 162.

of the passing of the Suits Valuation Act the Government was well aware that the statutory value of the land computed under the provisions of the Court-Fees Act did not reflect its true value. They deprecated that state of things—not because it resulted in a diminution of Court-fee[91]—but because inferior courts exercised jurisdiction over suits where the intrinsic value of the subject-matter was really high though the statutory value on which the court-fee was computed was abnormally low. This could well have been avoided by a simple provision that the true value of the subject-matter should be disclosed. But it would have resulted in the consequent enhancement of court-fee. The Government was not willing to do that. They could still have achieved both the objects of having the proper value for jurisdiction without a consequent enhancement of court-fees by simply remitting a portion of the fee which would have become payable if the fee is computed on the true value. But they choose to have a roundabout method of framing rules for the computation of value for jurisdiction as distinguished from court-fees. This rule-making power our Local Government sought at the hands of the Imperial Legislature, got it, but never used it. In fact they went back on their original policy by demolishing the distinction between value for jurisdiction and value for court-fees. The result of that, will certainly be the enhancement of court-fees in some cases. That was the object of the enactment of the proviso above referred to which laid down that when rules were framed under section 3 of the Suits Valuation Act, the value computed thereunder will be *also* the value for court-fees. Leaving the objection alone, it cannot for a moment be contended that this distinction —barring cases where a fixed court-fee is levied—is not illogical. The man in the street knows what the value of any property is. If he says a piece of land assessed to revenue is worth Rs. 3,000 its value is Rs. 3,000 though the Court-Fees Act may say its value must be deemed to be Rs. 600 at ten times the kist of Rs. 60 levied by Government: Why this fiction? Again the rule of computing the value by a multiple of the kist levied by Government is defective. At the time the kist was taken as the unit for computation, it was thought that as the rate was fixed by Government relative to the fertility of the soil and its consequent yield, the kist represented a percentage of the possible net income from the land. But the present day levy of land revenue is a more complicated one.[92] Consequent on the comparatively higher prices for produce and of the facilities for cultivation, for instance, the several irrigation works undertaken by Government at high capital cost, the Government levies an additional amount in the shape not of kist but of tax, the justification for the levy of that tax being the expectation of a greater outturn on account of the larger facilities now afforded which has eliminated to a degree the vicissitudes of flood and drought. These are not included in arriving at the computation of the ten times the kist. The difference will be marked in the case of dry lands on which raising of wet crops is permitted on payment of an additional amount as water-rates. The water-rate is out of all proportion to the original nominal kist. Thus by raising wet crops, the yield from the late dry lands will be much more than when the land was cultivated as dry and consequently the value of land must have necessarily gone up. The old method of computation at a multiple of kist results therefore in a gross undervaluation of the land. All these could be avoided by having a uniform system of valuing all kinds of immovable property at the market value. It has been doubted by some whether the substitution of a market value as the true value for such lands would not result in throwing additional work on courts in determining the true value of lands on the supposition that every plaintiff will undervalue the lands. But it is noticeable that even as the Act stands at present, almost all other kinds of immovable property except lands paying revenue to Government are assessed at the market value, for instance, buildings, houses, house-sites, gardens, inam lands, etc., and there is no complaint that it had thrown heavy work on courts. If the present statutory value did in any way approximate to the true value, there would then have been no occasion to change the principle of valuation. It is only because the statutory value as now computed is only a fraction of the true value, the suggestion is made that the property should be assessed at the market value. This does not preclude the possibility of the market value being fixed at a certain multiple of the assessment. Value of a property is always arrived at from several factors, the income that accrues from the property, the classification of the land in Settlement Registers and the rate to which it is assessed to revenue and so forth. The true valuation cannot always be taken as equal to ten times the assessment. It may be that the true value may be approximated if it is taken at thirty times the assessment. But why attach such importance to one of the ingredients from which the true value can be deduced? In all suits relating to the possession of immovable property, the intrinsic value of the property should be the basis of computation for *ad valorem* fees. Whether the amount is arrived at

[91] Speech of the Hon'ble Mr. Ilbert on the Suits Valuation Bill "I repeat there is no intention to do anything which will directly or indirectly raise the institution fees payable in suits relating to land."
[92] Vide Land Revenue Administration in British India.

by taking the kist in revenue-paying lands, the net mesne profits accruing from some other lands or by any other method, are matters only of subsidiary importance. It will be no doubt expedient to give statutory recognition to any formula by which courts can, with the minimum trouble, arrive at the value of any property. It is for consideration whether if prominence is to be given to this aspect, the market value should be fixed by statute as representing, say, twenty five times the annual kist. A lay man can assess the value of a house, a house-site, a garden, a plot of inam land, a bit of zamindari land, ryoti land, a full survey number, and a fractional survey number. In assessing the value of all these, any person can, with a deal of approximation, state what the value is. In the Court-Fees Act, however, we find different methods adumbrated for arriving at the value of these different specimens of immovable property—for some, there is the market value, for some, there is the twenty times the peshkash payable to Government, for some, the value is ten times the revenue collected from ryotwari lands, for some, it is fifteen times the annual net profits and for a full survey number, it is ten times the kist and if a portion of the land indicated by that survey number is not separately registered in the books, it is the market value. It is extremely desirable to do away with these kinds of valuations which are quite unwarranted when the principle is conceded—as it ought to be—as it is almost a truism—that the *value* of the subject-matter is the *true valuation*. The method employed is obviously unsatisfactory and therefore it is, it is suggested that provision may be made that where the subject-matter is immovable property, the market value must be taken to be the value both for the purpose of court-fee and jurisdiction. If, however, it is still considered that courts should not be put to the neccessity of embarking on an enquiry about the value in case there is any dispute about it—and I almost despair of formulating any proposals which could do away with the necessity of the courts having a watchful eye over the conduct of the litigants in these fiscal matters—the next best course will be to lay down a rule to the effect that the market value in the case of ryotwari lands should be taken to be at twenty to thirty times [93] the annual kist payable to Government. The multiple is entirely for the Legislature to fix. The change that is recommended above, however, is not only simple and logical but also just and equitable.

73. While considering the topic of the fixation of fee for suits for the recovery of immovable property reference may be made to a certain class of cases in Malabar. Under the Malabar Compensation for Tenants Improvements Act (I of 1900), section 3, the word "tenant" includes a person who though not a lessee, in good faith believes himself to be a lessee in possession of land. Consequently if the owner sues to recover possession of land in the possession of such a person, who though apparently is no better than a trespasser, is a tenant within the meaning of the Act, the plaintiff is liable to pay for the improvements effected by the so-called "tenant." But it is clear that the suit being based on title for possession has to be valued as a suit for possession and the question arises whether the valuation should in that case include also the value of the improvements which would enhance the value of the property sought to be recovered. Of course in cases of redemption or ejectment of a tenant, the value of the property is irrelevant as those reliefs are valued on a different principle. Does this case stand on a different footing altogether? Of course if a suit for possession is to be valued at the value of the subject-matter, then the value of same at the time of the institution of the suit must determine the value. This will include the value of improvements to the property. But if the plaintiff is obliged to pay the defendant as a condition precedent to his getting a decree for possession, a specified amount for improvements, the value of the property to the plaintiff is the real value of same which includes the value of improvements minus the amount payable by plaintiff before he can recover possession, which amount represents the value of improvements. This results in the valuation being reduced to the value of the property without the improvements. A plaintiff can even otherwise get round this, by praying for vacant possession after removal of any structure or the improvement in a building erected on the property which of course cannot be done in Malabar. Similar cases might arise under the Madras City Tenants' Protection Act also. In all these cases where the plaintiff recognizes his liability to pay compensation to the defendant before he can evict him, he should be at liberty to value the property without reference to the enhancement of the value thereof as the result of improvements effected by the defendant.

CHAPTER XIX.—SUITS TO ENFORCE A RIGHT OF PRE-EMPTION.

74. The right of pre-emption is a right which the owner of an immovable property possesses under certain circumstances to enforce the sale to him of immovable property which has been sold to another person. The right of pre-emption is not recognized in the Presidency of Madras,[94] unless by local custom in Malabar.[95] The Court-Fees Act [96] provides that the fee is to be computed on the value of the property in respect of which the right is claimed, according to section 7, clause (v) for possession of the property. This class of suits is akin to a suit for specific performance, though the right to get a sale is based not on contract but under the personal law of the parties or local custom. In a suit for the specific performance of a contract of sale, the value of the suit is according to the amount of the consideration. The right to pre-empt arises only out of a valid and completed sale.[97] Consequently, the proper method of valuing such suits will be on the consideration for the sale, which the pre-emptor seeks to avoid. The method of valuing the land according to section 7, clause (v), when the value is made dependent on the annual kist and the net mesne profits is not quite appropriate. If, the plaintiff has reasonable grounds to believe that the price mentioned in the sale-deed sought to be set aside is fictitious, he can mention the price for which according to him, the property has been sold.[98] This will be the value of the suit. Of course, if as a result of the investigation by the court, the plaintiff is given a decree for pre-emption only on condition of his paying an amount in excess of what he had mentioned in the plaint as the proper price and for which he had paid court-fee, the plaintiff will have to pay additional court-fee on the excess amount ultimately found payable by him, before a decree could be passed in his favour.

[93] In Lahore it is thirty times the annual kist for purpose of jurisdiction.

CHAPTER XX.—CLAIM FOR MESNE PROFITS.

75. There is a deal of confusion and uncertainty regarding the court-fee leviable on claims for mesne profits both in the trial court and in appeals. As regards past mesne profits, there cannot be any difficulty, for the plaintiff claims past mesne profits at a certain figure and the court ascertains it and embodies it in a decree. Though mesne profits are approximately valued, courts are not precluded from granting a decree for a higher amount than what is assessed to be the value for past mesne profits in the plaint. In such a suit, there may be a dual decree or a single decree. Where the mesne profits are determined after a preliminary decree is passed, then the additional court-fee is leviable before the mesne profits are embodied in the final decree. If a single decree is passed, and the mesne profits decreed is in excess of what it was originally approximately valued, then, under section 11 of the Act, execution of the decree shall not issue until the additional court-fee is paid. This is analogous to suits for accounts where on account-taking, a larger amount is decreed to the plaintiff than what he has valued in the plaint originally. For the reasons set out under the discussion on suits for accounts, it is expedient that this excess court-fee that may be payable must be collected from the plaintiff as a public demand even after the passing of the decree instead of its being made dependent on the off-chance of the decree-holder invoking the aid of the court in execution proceedings.

The case of future mesne profits is more complex. "The power of a court to grant future mesne profits and future interest is an exception to the general rule that a plaintiff can only sue on such cause of action as has arisen on the date of instituting his suit and that the court can give him no more. These provisions were clearly made to prevent the constant litigation that would be necessary if persons unlawfully kept out of possession of their lands had to file suits every three years for mesne profits that had accrued since the filing of the previous suit. Although, therefore, a plaintiff can ask in his plaint for future mesne profits that had accrued, no cause of action for these mesne profits has arisen and no court-fee is payable on this part of his claim.[99] Consequently the plaintiff is not bound to pay court-fee on future mesne profits that he may claim in the plaint.

76. Future mesne profits are divisible into two periods, that which accrues from the date of the institution of the suit till the date of the decree, and that which accrues from the date of the decree granting possession till delivery of possession to the decree-holder. Under the provisions of the Code, the mesne profits are to be ascertained and a final decree should be passed embodying same. It cannot be left to be determined in execution proceedings. Therefore, whether preliminary and final decrees are passed, or a single decree is passed, future mesne profits should be determined and embodied in the final decree.[100] When a final decree is passed that portion of the future mesne profits that has accrued during the pendency of the suit becomes crystallized and it partakes of the nature of past mesne profits to that extent.

[94] 6 M.H.C. 26.
[95] 20 Mad. 305.
[96] Section 7, clause (vi).
[97] 22 All. 343.
[98] 43 All. 137.
[99] 71 M.L.J. 677.
[100] (1938) 1 M.L.J. 750.

77. As the law now stands no portion of the court-fee in respect of future mesne profits is payable before a final decree is passed.[101] There is no reason why in case of excess amount decreed as past mesne profits, the additional court-fee is payable *before* the final decree is passed and why in cases where the future mesne profits are ascertained before the passing of a final decree the fee due thereon is not to be levied before the final decree is passed. A distinction may perhaps be drawn between past and future mesne profits to the effect that in the latter case the grant is discretionary and the party may be referred to a separate suit. But where the court determines the future mesne profits, this distinction no longer exists. Therefore, it is recommended that the procedure prescribed for the payment and the collection of the court-fee in the case of excess past mesne profits might be adopted in this case as well.

78. As regards the future mesne profits that accrues from day to day after date of the decree till date of the delivery of possession, as that will be a varying figure, that could be ascertained only after possession is either surrendered by a judgment-debtor or delivery of possession is effected in execution proceedings, the present provision that execution for the recovery of such future mesne profits can issue only if the court-fee thereon is paid might well stand. Of course in cases where the final decree as regards mesne profits is passed after delivery of possession, the amount of future mesne profits is a sum certain and can be dealt with in the same manner as past mesne profits.

79. As regards appeals in a case where past mesne profits have not been ascertained but only a decree for possession of the property has been passed and the defendant appeals, this is as regards mesne profits analogous to an appeal against a preliminary decision in a suit for accounts. The view of our court,[102] however, is that he need not value the claim of the plaintiff for past mesne profits, and this is opposed to the view of the Calcutta[103] and Patna[104] High Courts. If a person against whom the decree is given appeals, it would mean that he questions the validity of both portions of the decree, that which granted possession and that which granted past mesne profits. Inasmuch as past mesne profits has not been ascertained, the only method by which the appeal could be valued is on the analogy of a suit for accounts where a defendant appealing against his accountability, has to value the appeal at the valuation given in the plaint.[105] As regards future mesne profits where the plaintiff is the appellant, the state of the law is that the valuation in the appeal is only as in the plaint. The plaintiff where the suit is dismissed, "is in fact told that he had no cause of action against the defendant at the time of filing his suit and it is against this adverse finding that he has to appeal. After having his suit dismissed, he goes to the appellate court in the same position as at the time of filing the suit." Long ago,[106] this distinction between the position of a defendant-appellant and a plaintiff-appellant was considered so obvious as not to require discussion and this distinction has always since been maintained.[107] Therefore, the plaintiff-appellant need not value the future mesne profits at any figure or pay the court-fees thereon unless it be that future mesne profits that has been prayed for, has been denied by the lower court and the appeal relates only to that finding. In such cases, the appellant will have to give his own valuation of the future mesne profits denied to him as is done in the case of appeals relating only to costs or the denial of future interest in money suits. Of course this cannot apply where the lower court *did not deny* but simply *refused* to entertain the claim for future mesne profits.[108]

80. The case of a defendant-appellant is quite distinct as has been observed above. He has to get rid of a decree and therefore the amount that has been granted to the plaintiff in the decree and against which the defendant prefers an appeal must be the subject-matter of the appeal even though a larger amount has been given in the decree by way of interest or ascertained mesne profits than was due to the plaintiff at the time of the institution of the suit. Therefore the defendant-appellant must pay court-fees on future mesne profits that had been decreed. The appellant need not calculate the mesne profits up to the date of filing the appeal and the value should be fixed only as in the decree appealed against. In the first place the period between the date of the decree and the filing of the appeal will not be appreciable and secondly it may not be possible in all cases to assess the mesne profits during that period. For instance in the case of cultivable lands where the produce is collected only periodically or annually, the mesne profits cannot be ascertained for a fractional period of the year say for two or three months as there may not be any profits accruing during that period, and there may be only the cultivation *expenses* instead.

[101] 71 M.L.J. at p. 682.
[102] 53 M. 540.
[103] 13 C.W.N. 815.
[104] 49 I.C. 962 (Pat.); 8 Pat. 906.
[105] See Mr. Satyamurti Ayyar's commentaries, pp. 432, 433 (1938) I. M.L.J. 628 (F.B.).
[106] 10 M.L.J. 144.
[107] 71 M.L.J. at p. 685.
[108] 71 M.L.J. 677.

CHAPTER XXI.—DECLARATORY SUITS.

81. At present a fixed fee is levied under schedule II, article 17-A, of the Court-Fees Act in suits where the relief prayed for is pure and simple declaration, without any consequential relief. The fee, though not an *ad valorem* one, depends both on the forum in which the suit is laid and to some extent on the value of the subject-matter of the suit. Thus where such a suit is instituted in a District Munsif's Court or the City Civil Court, a fee of Rs. 15 is collected and where it is instituted in a district court or a sub-court where the value is less than Rs. 10,000, a fee of Rs. 100 is levied and where it is Rs. 10,000 and over, a fee of Rs. 500 is charged.

82. A distinction should necessarily be drawn between suits where the declaratory relief sought is the substantive relief and cases where it is only a subsidiary one paving the way for a substantive relief, as for instance where the relief is for a declaration and possession. The latter class of cases is construed to be a distinct category of suits and the relief for declaration is simply a step for the further relief for possession and becomes merged in that. But a distinction has also to be drawn between suits where the only relief sought is declaration and where an unsubstantial consequential relief is tacked on to it. This has led to a good deal of abuse. A fixed fee depending to some extent on the value of the subject-matter of the suit and the forum, is levied in such suits for simple declaration. If in any case the plaintiff desires to escape payment of fee at that rate, he usually adds a consequential relief—in many cases unsubstantial and unnecessary—and bringing that under the category of cases where declaration coupled with a consequential relief is sought, values the suit as he chooses. Of course the Madras Court-Fees Act has remedied this defect to some extent by grafting a proviso to section 7, clause (iv) (c) enacting that where such consequential relief relates to immovable property and falls short of possession, the value should not be less than half the value of the property involved. Even here the provision is not quite satisfactory. If a declaratory relief is prayed for in respect of immovable property whose value is Rs. 10,000, then under article 17-A the fee payable is Rs. 500. A plaintiff can easily get round this provision by tacking on a prayer for injunction that his possession should not be interfered with, in which case it will fall under the proviso to section 7, clause (iv) (c) and court-fee on half the value of the property is leviable. Unlike cases falling under article 17-A where the market value of the properties governs jurisdiction and court-fees,[109] the valuation under section 7, clause (iv) (c), is only the statutory value which is usually not more than one-third or one-fourth the market value. Consequently the plaintiff secures a relief relative to property whose market value is Rs. 10,000, by making the statutory value applicable, whereby it is scaled down to Rs. 2,500, and pays court-fee again on half of it, i.e., on Rs. 1,250 under section V, clause (iv) (c) proviso. It is inexpedient that the incidence of court-fee should be dependent on the dexterity in drafting the plaint.

82-A. Again the proviso above referred to enacts that the subject-matter should be valued at not less than half the value. This leads to several practical difficulties. For instance a suit for possession of a house worth Rs. 5,000 has to be instituted in a sub-court, while if a declaration and injunction are prayed for in respect of same, the value of the subject being halved, the forum is the court of a District Munsif. After all the point to be adjudged in both the suits is the same, viz., the title of the plaintiff, and the question of possession is quite a subsidiary one. Thus this scheme of valuation changes the forum altogether. From this arises the further question whether the decision in the inferior court will or will not be *res judicata* in any later proceeding in a superior court, for the reason that the inferior court could not have granted the relief sought in the subsequent suit.

Again if a suit where a declaration and injunction alone is sought, the court finds that the plaintiff has no possession, and the plaint is consequently amended praying for possession also, then as the suit was originally valued only at one-half there may arise cases where the plaint may have to be returned for want of jurisdiction.

These would be avoided if instead of halving the value of the suit, it is provided that the suit should be valued at the full value but that where possession is not sought, the *ad valorem* fee will be cut down by half.

83. The present state of the law also works a hardship to litigants in some cases. Under article 17-A of schedule II of the Act, if the value of the subject-matter of the suit in a sub-court is Rs. 10,000 and below, the fee payable is Rs. 100. If it is above, the fee is Rs. 500. There is a steep rise of the fee fivefold in the region of the value Rs. 10,000 and it is no wonder there is always an undervaluation where the claim approximates this value. This disparity can be minimized by having a graded scale of fees. Again if in a suit for partition of joint family properties filed in a Subordinate Judge's Court, there

[109] 50 M. 646; 52 Mad. 340; 68 M.L.J. 329.

is a prayer for declaration that a debt for Rs. 100 is not binding on the joint family, the fee for that declaratory relief is Rs. 100 for, that is the minimum fee for declaratory relief in a suit in a sub-court [110]. This hardship might happen even in cases filed in District Munsifs' Courts where the declaration is sought in cases where the value is Rs. 130 or less. The fixed fee of Rs. 15 will exceed the *ad valorem fee*. Of course a litigant can escape the heavier levy by resorting to the expedient adverted to above, of impressing a consequential relief into service and valuing the suit as he chooses. But there may be cases where his liberty to pray for this consequential relief may be curtailed, for instance where the declaration sought is about property in *custodia legis*.[111] This generally happens in the case of appeals in Land Acquisition cases,[112] where parties are driven to the necessity of paying a fee much higher than what is warranted by the value of the subject matter involved because the appeal in all such cases is against the decision of a superior court which alone is clothed with jurisdiction under the Act, irrespective of the value of the subject-matter involved. A further anomaly has come into existence after the amendment of the Madras City Civil Court Act by which the pecuniary jurisdiction was raised to Rs. 5,000. The fee payable in respect of declaratory suits in the City Civil Court is Rs. 15. This continues to be the fee even though the original pecuniary jurisdiction of the court was less than that of a District Munsif's Court and now has been enhanced to Rs. 5,000 with the prospect of a possible increase up to the limit of Rs. 10,000 as provided in the Act. That a fixed fee has been levied for declaratory suits is not due to the fact that they are incapable of valuation[113] but that it was thought just and equitable to show some concession in the matter of the levy of fees where the remedy of possession is not sought. In order to steer clear of all these several difficulties and to simplify the law relating to declaratory suits it is recommended that the distinction between suits for simple declaration and those for declaration with consequential reliefs (where the consequential relief is not one for possession) be abolished and court-fee of one-half of the full *ad valorem* scale levied in all such suits. This suggestion, it is expected, might neither enhance the burden nor result in a shrinkage of court-fee revenue. For instance, in a suit of the value of Rs. 3,100 filed in a Sub-Court the full *ad valorem* fee payable is Rs. 269–15–0 and half of it will be about Rs. 135. Now the fixed fee is Rs. 100. It may be the fee is enhanced by Rs. 35. But taking the case of a suit valued at Rs. 10,000 the *ad valorem* fee is Rs. 712–7–0. According to the recommendation now made, a moiety of it comes to Rs. 356–4–0 while the fee at present levied is Rs. 500. Thus there may be a slight increase and decrease of fees in individual cases but the total is likely to adjust itself to the present figure and the probability is that there will be even an increase in revenue while the levy will not be felt as heavy or oppressive. Further the recommendation has the merit of being more equitable and the anomalies above referred to will also be avoided. The Suits Valuation Rules Committee has also recommended the levy of half the regular fee in cases where declaration is sought about property or money in the custody of a court, a consequential relief being quite inappropriate in such cases.

84. If the subject-matter of the suit is capable of valuation, there should be only one method of valuation whatever the nature of the property whether it is immovable or movable property. At present a minimum value is prescribed only in suits relating to immovable property. There is no logical difference between movable and immovable property and it stands to reason that they should be valued likewise. This proposal was considered by the Suits Valuation Rules Committee (vide page 14 of their report) and there was some difference of opinion regarding same among the members. The proposal was accepted in a way, when the members of the Committee considered it expedient that a similar provision analogous to the case of immovable property may be incorporated at least in respect of moneys and other movables in the custody of a court or of a public officer, because in such cases the declaration will be immediately given effect to and no further suit for recovery of possession will be necessary. Thus in those cases the distinction between suits for bare declaration and those in which consequential reliefs are sought is abrogated. This principle could well be extended to all cases and there is hardly any difference between these two classes of suits.

Chapter XXII.—Injunctions.

85. Where there is a prayer for injunction as the sole relief that is sought by a plaintiff, he is permitted to value the relief as he chooses under the present Act [section 7, clause (iv) (*d*)]. The injunction sought might relate to tangible property having value or might

[110] (1937) 2 M.L.J. 616.

[111] 68 M.L.J. 327. Even in the case in (1937) 2 M.L.J. 616 cited supra the consequential relief of injunction was held not permissible because creditors did not take steps for recovery of their debts.

[112] *55 Mad. 641.*

[113] Vide paragraph 340 of the Indian Taxation Enquiry Committee Report.

relate to other matters which are either incapable of valuation or may not be satisfactorily valued, as for instance, where injunctions are sought to prevent waste or alienations, or breach of contract, defamation, slander, or infringement of a copyright, etc. In cases where the subject-matter with reference to which the injunction is sought does not admit of valuation or satisfactory valuation, the only proper method is to permit the plaintiff to value the relief as he chooses subject to a minimum of, say, Rs. 200 as in the case of suits for restitution of conjugal rights, etc.

86. As regards injunctions which are sought in relation to property movable or immovable, the question arises whether the plaintiff should assess the value of his relief as he chooses or whether it should bear some relation to the subject-matter of the suit. If a declaratory prayer precedes the grant of an injunction, then, there is provision made elsewhere that the rate of fee to be levied will be half as in a suit for possession. But it may be contended that in cases where the relief sought is only injunction, to protect the Plaintiff's possession of the property, the question of title is not investigated and hence, the fee should not be levied on the same basis as where there is a declaration of title and consequential relief.

It was doubted by the Suits Valuation Rules Committee whether the proviso to section 7, clause (iv) (*c*) will apply to cases where the consequential relief happens to be injunction, in view of the fact that there is a special clause for the relief of injunction. However, there is no denying the fact that advantage is taken by litigants of this liberty to value the relief as they choose by praying for an injunction pure and simple restraining the defendant from interfering with the plaintiff's alleged possession of the property. In all those cases, the plaintiff achieves his object by setting out *in extenso* in the body of the plaint a detailed assertion of his title to the property, the possession of which, he desires to be safeguarded by the issue of a perpetual injunction against the defendant. The plaint is so drafted praying for injunction alone, thereby making it appear that the suit is only for an alleged attempted interference with possession, with a view to avoid the operation of the proviso to section 7, clause (iv) (*c*) of the Court Fees Act which prescribes a minimum valuation for such classes of suits. Though a plaintiff is in possession, in order that perpetual injunction may be granted, he should prove that he has got juridical possession. A person in possession has a presumptive title and he must be presumed in law to be the absolute owner unless the contrary is shown and he is to be protected by law in his possession against all who cannot show a better title to his possession than his own.[114] As an injunction could be had only when the plaintiff is in possession of the property *and is also entitled to have that possession maintained*, where the defendant chooses to question the right of the plaintiff to be protected in his possession, an adjudication as to the plaintiff's right to be retained in possession arises, which in many a case, involves the question of title to the property. A person in possession without title has an interest in the property as against all the world except the true owner.[115] Consequently, it is necessary and proper that where the question of title has to be gone into, in suits where the relief prayed for is only an injunction, there should be an adjudication regarding title. Therefore, such suits are, in essence, only suits for declaration and consequential relief and should be levied to fee as in that case [115a]. The Suits Valuation Rules Committee suggests that it will be fair to insist on such valuation only in cases where an injunction is asked for on the ground that the plaintiff's possession of the immovable property is disturbed or threatened by a defendant *who denies the plaintiff's title*. But the practical difficulty in formulating the rule in those words will be that no plaintiff will have the condour to acknowledge that the defendant who threatens his possession does so under a rival *claim of title*. A perusal of the plaints in almost all these cases will clearly show that the plaintiffs plead their ignorance to under what otensible right the defendants claim title. The plaintiff simply ignores the claim of the defendant by characterizing him simply as a "wrong doer or trespasser" under no colour of title and asserts only his own right to the property and possession and prays for this preventive relief. Therefore, if the fee to be levied is to be assessed on the allegation in the plaint, as the decisions lay down, then, in none of these cases, could the proper fee be levied as the plaintiff does never in so many words, aver that the threatened invasion of his possession by the defendant is on the basis of his rival claim and assertion of title to the property. This will emerge only from the written statement. Consequently it is, the recommendation of the Suits Valuation Rules Committee may have to be adopted with this variation, that is, whether there is an averment in the plaint or not that the defendant denies the plaintiff's title, if in order to adjudicate on the claim of the plaintiff for injunction, the relative title of the parties to the suit, has to be gone into, then, the suit must be treated as one for declaration and injunction and the proper

[114] Byrne's Law Dictionary.

[115a] (1939) 1 M.L.J. 317.

[115] 24 All. 157.

fee levied as such. The stage at which this levy has to be made is when issues are framed when an issue regarding the title of the plaintiff is raised either specifically or incidentally for considering whether if the possession of the plaintiff is true, the plaintiff should be maintained in his possession.

87. Therefore, the principle that the plaintiff is entitled to value the relief for injunction as he chooses will stand and the *ad valorem* fee according to his valuation will be fixed and only in cases where an express or an implied question of title is raised in the issue, the plaintiff will be called upon to pay the additional fee that would have been levied if the suit is started as one for declaration and injunction. Of course if at any stage it is found that an investigation of the title to the property is necessary and the value of the subject-matter will exceed the pecuniary limits of the court's jurisdiction the plaint will have to be returned for presentation to the proper court as provided by the Code of Civil Procedure.

88. Suits for injunction whether the prayer is or is not coupled with other reliefs as declaration, regarding title to a trade mark, patent, etc., consequent on an infringement thereof may be valued at the plaintiff's discretion, subject to a minimum of Rs. 500. A higher minimum valuation is fixed as these are rather rare actions and the subject-matter is generally of high value.

Chapter XXIII.—Easements.

89. Section 7, clause (iv) (*e*) of the Court Fees Act provides that in suits for "a right to some benefit not otherwise provided for, to arise out of land" the plaintiff can value the relief as he chooses. But the marginal note is that the rule provides for suits relating to easements: it appears that the rule was meant to apply only to such class of suits. At present while there is this provision for suits by the owner of a dominant tenement as it speaks only of a "benefit" arising out of land, there is no provision for a suit by the owner of servient tenement to have it declared that there is no easement. Such suits are now levied to fee as declaratory suits.

From the very nature of the suit, it is not possible to prescribe rules by which the value can be exactly determined and therefore this can be left to the plaintiff to value as he chooses subject to a minimum valuation of Rs. 100, which provision will apply to all suits relating to easements.

Chapter XXIV.—Partition actions.

90. It is admitted on all hands that the proper assessment of court-fee in partition suits is not easy and in no branch of current litigation is there so much abuse and evasion of payment of proper fee as in partition actions. This is mainly due not only to the unsatisfactory state of the law but also to the very nature of the suit which does not lend itself to a precise evaluation. Partition actions are generally those that relate to joint Hindu families or to other co-owners of property or those that are filed under the provisions of the recent Marumakkathayam Act. The suit of a plaintiff *seeking possession* of the property after a division of the property by metes and bounds, is different from the case where the plaintiff alleges he is in joint possession either actual or constructive of the properties of which he seeks a division. In the first case, though the plaintiff seeks a partition, in view of the fact that the property of which he seeks a division is not in his possession it is merely a suit for possession of property and fees should be levied as such[116]. The difficulty arises only in cases where the plaintiff alleges he is in joint possession of the property and what he seeks by a partition is only the transformation of his share in the entire property into full ownership of a portion thereof. This transformation of the right of the plaintiff in the entire joint family properties and the enlargement of his right in certain specified items thereof which is sought in a suit for partition has been considered to be a right which is incapable of valuation and liable to a fixed fee under article 17-B, schedule II[117] unless the suit is one for partition of joint family property between members of a subsisting coparcenary, where the view is taken that it is a "right to a share in joint property" and the plaintiff is allowed to assess the value of his relief on the ground that the right does not lend itself to satisfactory valuation.[118] As in the first class of cases, a fixed fee is leviable and in the other class, *ad valorem* fee at the plaintiff's valuation, advantage is generally taken by the plaintiff to frame his plaint in such a way as to bring it within one category or the other. This is rendered possible as under the Hindu Law, an unilateral unequivocal expression of intention to separate effects a disruption of the

[116] See 53 Mad. 540 following. A.I.R. 1925 Mad. 468.
[117] 43 Mad. 396, (F.B.).
[118] 21 M.L.J. 21 (F.B.).

joint family status and a severance of the share of the declarant. Whenever it suits a plaintiff, it is not unusual to see him rely on a prior notice of demand for partition as effecting a severance in status and file a suit for partition by metes and bounds as a tenant-in-common[119]. If it suits the plaintiff to take the other course, he can ignore his notice to separate, aver he is a coparcener and sue for partition of the joint family properties, put in his own valuation of the relief and pay any nominal *ad valorem* fee as he chooses.

91. It is eminently desirable that the levy of fee should not be thus capable of manipulation by a plaintiff. The remedy is to abrogate the distinction between these two classes of suits—that by a coparcener and that by other co-owners. This is one of the recommendations of the Suits Valuation Rules Committee. They observe that the language employed in section 7, clause (iv) (*b*) has led to conflict of decisions and has also led to an artificial distinction between partition suits amongst Hindus and non-Hindus[120]. They then refer to the rules framed in 1903 under the Suits Valuation Act, where it is provided that the subject-matter of a suit for the enforcement of a person's right as a member of a tarwad or illom should be valued at the amount at which the plaintiff's share will be valued if the suit was brought by a stranger. This would certainly be a proper method of valuation if the plaintiff seeking to enforce his right was out of possession and not in joint enjoyment of the tarwad property. The rule might perhaps be justified under the then state of the law where such a member was not entitled to sue for partition and his so-called relief for enforcement of his right as a member of the tarwad really meant his right to participate in the enjoyment of the tarwad properties, in other words, his right to be in joint possession, which obviously shows that he was out of possession. Therefore, it cannot be construed from that rule that the intention of the High Court is that even in suits where a plaintiff is in joint possession of the property, a suit for partition shouldbe br acketed with a suit for recovery of possession. Further, it would also be hard as it brings within one category cases which involve different kinds of reliefs and redress regarding different degrees of ownership of property. Now that it is recommended that the distinction between cases under section 7, clause (iv) (*b*) and schedule II, article 17-B is to be abrogated, it is for consideration whether the levy of fee should be on an *ad valorem* scale on the valuation as ascertained under the Act or a fixed fee under article 17-B. In Bengal, a fixed fee is levied. While a fixed fee has got the merit of simplicity, it is not difficult to imagine that it cannot be commensurate with the value of the interest involved as there may be several cases where the fee might either be too heavy or too light. As was observed by their Lordships of the Allahabad High Court [121] "it is absurd that a claim to partition of an estate valued thirteen lakhs of rupees should pay precisely the same fee as a claim to partition of a house worth a hundred rupees." It may be that, if applied to litigation in this Presidency, there is a distinction between suits cognizable by District Munsifs and those that are not so cognizable. In such cases, in suits filed in a sub-court, there might be the minimum valuation of Rs. 3,000. But once it exceeds Rs. 3,000, the fixed fee that might be levied in suits before Subordinate Judges' Courts must be the same whether the value of the estate just exceeds three thousand rupees or is three lakhs of rupees. The main principle that has to be kept in view for the levy of court-fees is to modulate the fee so that there may be a fair and equitable incidence of the burden which cannot be achieved by the levy of a fixed fee irrespective of the value of the subject-matter of the suit. Therefore, the only other alternative is the levy of an *ad valorem* fee. Section 7, clause (iv) (*b*) leaves the whole right of valuation entirely in the hands of the plaintiff and it may well be imagined that no plaintiff will value his suit at a higher figure than he need necessarily do. Consequently, many of these partition suits are litigated on a nominal valuation with a negligible amount of court-fee. Therefore, it is that the Suits Valuation Rules Committee adopted the *ad valorem* valuation as the proper valuation. After considering this position the Committee came to the conclusion that in all cases in which the plaint does not admit exclusion or denial of plaintiff's right, it may be fair to provide that the valuation to be placed on such reliefs shall not be less than half or one-third of what it would be if the suit were one for possession by a stranger. It is recommended that in such suits for partition, court-fee may be collected from the plaintiff at one-third of the fee which is leviable if he sues for possession of the property of the same value. Of course in computing the value of the properties sought to be partitioned, the liabilities will not be taken into account, as ascertainment and division of liabilities is only incidental to division of the assets, and there could not be any final determination of the liabilities unless the creditors are also parties to the suit.

92. A partition suit is in many cases a much more complex affair than a simple division of properties. The plaintiff might aver that a certain alienation by way of sale made by any other coparcener is not binding on him and pray for a share of the property sold. As

[119] A.I.R. 1926 Mad. 122; 59 M.L.J. 913; 64 M.L.J. 24; 64 M.L.J. 576.
[120] A.I.R. 1924 Mad. 207.
[121] F.A. 278 of 1935.

regards this relief it is akin to a suit for possession and the relief for a share of such property should be valued as a suit for possession of the plaintiff's interest therein[122]. Again, the plaintiff might attack certain debts contracted by any other coparcener as not binding on him in which case this is tantamount to a relief for declaration regarding that debt. The creditors may or may not be parties to the suit. If they are impleaded, this specific issue about the binding character of a particular debt is a separate subject altogether. The view is expressed [123] in some quarters that even though a partition suit might be teeming with these subsidiary adjudications regarding distinct matters, these are the necessary incidents of a partition suit, as in any event there has to be an ascertainment of the total assets and liabilities of the joint family, and these adjudications about several alienations are only incidental to the main adjudication, namely, the partition of joint family properties. Though this is a plausible view no doubt, still, if such actions are to be rendered liable to the payment of an adequate fee and such fee should not be charged as a fixed one irrespective of either the value of the subject-matter or the number of separate adjudications then, it becomes necessary to charge a fee where the services of the court are requisitioned to consider the conflicting claims of debtors and creditors. Further, in cases where a creditor is made a party it is in reality a separate suit, that which relates to his claim to be paid out of the joint family assets and will be *res judicata* in another proceeding. It is therefore recommended that the plaintiff, if he seeks the avoidance of any debt, should pay a fee as for declaration in respect of the debt proportionate to his share in the joint property.

93. It happens in some cases where a plaintiff makes an averment that he is in joint possession and seeks only a partition by metes and bounds paying court-fee at the concession rate, it is found that his allegation of joint possession is not substantiated. In such cases the plaintiff's suit is in reality one for recovery of possession. The allegation of joint possession or otherwise has no bearing on the plaintiff's right to partition but is relevant only for the determination of the fee payable. Consequently, a plaintiff who has paid a lesser amount as court-fee on the strength of his allegation of joint possession is liable to make up the deficiency and pay the fee as leviable in a suit for possession in case his allegation of joint possession is found against. Of course, court-fee being levied on the basis of the allegations in the plaint, there is no opportunity to check the correctness thereof at the time of the institution of the suit. But the fee is liable to be revised in accordance with the findings of court and the plaintiff should be made to pay the deficit court-fee before a decree is passed in his favour. This is to be without prejudice to the right of the Crown to collect the deficit as a public demand. This is only a logical extension of the dictum of Mr. JUSTICE WALLACE[124] that " If at the actual hearing of the suit, it is found that as a fact there has been an actual ouster of the plaintiff, and that the defendants have been excluding him from all participation in the family profits, then different considerations would arise and the plaintiff may have to pay additional court-fee as in a suit for ejectment under section 7, clause (*v*) of the Act ".

Of course, where the plaintiff makes a claim for accounts in a partition suit then that relief should be valued by him approximately and all the rules that pertain to a suit for accounts should be followed in the assessment and the collection of fee regarding such reliefs.

94. There are divergent views about the liability of the defendants in a partition suit to pay court-fee. Under the Act, as it stands at present, it is only the plaintiff that is liable to pay the fee though the trial, the adjudication and the final decree are for the benefit not only of the plaintiff but also of every co-sharer. The advocates for the retention of the present provision giving immunity to the defendants from the payment of court-fee mainly lay stress on the fact that the defendants are brought before the court not of their own accord, but at the instance of others and that therefore they should not be mulcted with any fee for reliefs that they may seek. There may be also cases where a division of the shares of the defendants may be a necessary preliminary to the ascertainment of the plaintiff's share. In such cases, no doubt, it can be urged justly that a defendant should not be made liable for court-fee. But where the plaintiff's share alone can be cut off, and the defendants are not content with that, but take the opportunity of the plaintiff's suit to secure a division among themselves, then, there is no reason why such of them as seek relief similar to that of the plaintiff should get the services of the court gratis from the mere accident the plaintiff happens to launch the suit. It is settled law that every party to a partition suit should be considered to be a plaintiff and if a plaintiff in a partition action is not willing to prosecute the suit, the defendant has got a right to get himself transposed as plaintiff and continue the action. In such a case, as there is a similarity of rights between the plaintiff

122 (1937) 1 M.L.J. 572.
Note appended to the Report of the Suits Valuation Rules Committee.
123 (1938) M.W.N. 131.
124 A.I.R. 1925 M. 468 at p. 469.

and the defendants there is no justification for exempting the defendants from the payment of any fee for the reliefs they may claim. Again, there may be cases where a defendant might not simply take the attitude of contesting the plaintiff's right to partition of the properties set out in the plaint but might seek to surcharge the plaint schedule by averring that other properties either with the plaintiff or with any other party to the suit must be brought into the hotchpot as joint family property. In such cases, the defendant who makes these allegations raises a substantial issue for adjudication and there is no reason why such person should be exempted from the payment of fee merely because he happens to be a defendant. Again there may be cases where there is a dispute between the defendants regarding the ownership of a particular item of property or of the liability for any debt. In view of all these facts, it may not be quite expedient to exempt defendants from the payment of a fee and make the plaintiff alone bear the brunt of the litigation. This principle has been accepted in the United Provinces where the Act provides that written statements in partition suits seeking partition are liable to court-fee as a plaint. A similar provision may also be made here. It need hardly be stated that in some cases, such a fee could not be levied. For instance, where, the plaintiff and the defendant are entitled to equal moieties, it is obvious that the defendant need not claim a partition of the other half as it has of necessity to be determined. But if the defendant prays for any other reliefs regarding properties not included in the plaint schedule or declaratory reliefs regarding any debt, etc., he will be liable for the payment of court-fee as a plaintiff would be under similar circumstances. If the defendants who seek to get their shares separated in the suit are not made liable to court-fee, it might happen and such cases are not infrequent—that an insignificant sharer is made to figure as a plaintiff and pay court-fee calculated on his share while property worth several times the plaintiff's share is dealt with in the suit and the claims of the several sharers adjudicated upon. The collection of an *ad valorem* fee calculated on the plaintiff's share alone may not be quite commensurate with the value of the litigation.

94-A. The principles enunciated above as regards valuation of partition suits are not applicable in entirety to the valuation of appeals in partition suits. There may be different kinds of such appeals and different considerations apply in respect of these separate types of appeals. Where a plaintiff comes to court with an allegation that he is in joint possession of the property sought to be partitioned and his suit is dismissed, the plaintiff's right in the property and his claim to have been in joint possession are negatived. The plaintiff appealing against the decision goes to the Appellate court on the same allegations as in the plaint and should pay court-fee on his appeal as on his plaint.

If the plaintiff's suit is decreed but he is not able to sustain his allegation of joint possession, he would have been required to pay court-fee as for possession before a decree is passed. Whether the plaintiff's allegation of joint possession is upheld or not if the defendant appeals against the decree and contests the right of the plaintiff to a share either in the whole or part of the property, then there is no reason why he should not be liable to pay full court-fee on the value of the subject matter in dispute in appeal and why he should get the concession of paying only one third the usual fee as in the suit. It is because the plaintiff is considered as praying for an equitable remedy of having his joint possession in the whole property converted into separate and exclusive possession of a part thereof and such a remedy is not capable of being satisfactorily valued that full court-fee is not levied from him on the value of his share. This consideration cannot apply to an appeal by the defendant contesting the plaintiff's right *in toto*. Such an appeal has a definite money value and will have to be assessed to court-fee on such value, though it may result in an appeal being charged to a higher fee than the suit out of which it arises, in cases where the defendant disputes the plaintiff's right to the entire property. An appeal by the plaintiff or a defendant relating to the quantum of the appellant's share in the joint property, is also capable of definite money valuation and court-fee should be paid at the full scale on the value of the subject matter in dispute in the appeal.

Where the appeal whether by the plaintiff or by the defendant relates to properties in the possession of strangers, there is no difficulty because both the valuation and court-fee are on an *ad valorem* basis even in the suit with regard to such properties and the same principle would be applicable to the appeal as well.

Where such an appeal raises the question of the binding character of a debt or other transaction, the appeal would be chargeable to court-fee as for a declaratory relief regarding same. Where it relates to the accountability of a party, it may have to be valued as in the case of appeals in account suits. Where it relates to the question of maintenance due to a maintenance holder, the principle of valuation of appeals in maintenance suits should be made applicable.

95. Regarding the forum for partition suits if at present the suit is filed under section 7, clause (iv) (*b*) of the Act the value of the plaintiff's share alone determines the jurisdiction

while if the suit is filed under schedule II, article 17-B, it appears that the jurisdiction is the entire value of the joint properties [125], though in practice this is not adhered to. It is desirable that the suit should be valued for jurisdiction according to the entire property sought to be partitioned and not merely the plaintiff's share therein. Otherwise it will lead to an anomaly where a person entitled to a small fraction of the estate files a suit, it might be within the jurisdiction of a District Munsif, while if the defendants file a suit for partition in respect of the same properties the suit may have to be instituted in a Subordinate Judge's Court. Still the questions that are to be decided by the Courts are exactly the same whatever may be the interest of the plaintiff in the entire property. It is therefore necessary to make it clear that the value for jurisdiction in all such cases should be the value of the entire properties of which a division is sought. As jurisdiction is always determined according to the allegations in the plaint the subject matter of the suit should be taken to be what is set out in the schedule to the plaint. A rule to that effect might be framed under section 9 of the Suits Valuation Act.

96. Consequent on the conferment on a member of a Marumakkathayam family of a right to get a partition of family properties the question has arisen whether, they are similar to suits for partition by a member of a joint Hindu family, and considering the fact that this right of partition is a creature of Statute and circumscribed by restrictions whether it can confer on a *Marumakkathayi* the same rights as a coparcener of a joint Hindu family. The doubt was whether a demand by a member of a Marumakkathayam family effected any disruption of "joint status" as in a joint Hindu family, converting the person making a demand, a co-owner or a joint tenant. But the discussion becomes unnecessary in view of the recommendation that the distinction in the valuation of suit by a coparcener in joint possession seeking partition by metes and bounds and a suit by one who equally in joint possession avers a disruption of joint family status by an antecedent declaration of his intention to separate may be abrogated. As the same rule governs court-fee and valuation in both classes of cases, it is unnecessary to consider in such partition suits whether a member of a Marumakkathayam family has got a right to effect a severance of status by an unilateral unequivocal declaration of intention to separate as a coparcener in a joint Hindu family could.

Chapter XXV.—Partnership Suits.

97. Suits for dissolution of partnership and accounts have certain characteristics that pertain to partition suits, administration suits and suits for accounts. At present, partnership suits are valued as account suits, the plaintiff giving a tentative value of what, according to him will be his share of the partnership assets as a result of taking an account of the assets and liabilities of the partnership [126]. Such suits resemble partition suits as the assets and liabilities of the partnership have to be ascertained as in the case of a joint Hindu family and they are also distributed amongst the partners according to the shares to which they are entitled. In practice, there is a difference between these two classes of suits. In suits for partition, the assets that are sought to be divided are set out in the schedule and a division thereof by metes and bounds is sought while in a suit for dissolution of partnership, there is no specification of what the partnership assets are and these are ascertained only in the proceedings subsequent to the preliminary decree. Partnership suits resemble administration suits where also the assets are realized and the liabilities are disbursed and the balance is distributed among the different persons entitled to same. The very nature of a partnership action which has got characteristics common to the other types of suits mentioned above makes it difficult to assess court-fee in such suits which will be commensurate with the value of the subject matter and will be borne by all the parties who benefit by the adjudication in the suit, in degrees proportionate to the value of the reliefs obtained by them.

98. In one sense, suits for dissolution of partnership resemble proceedings under the Companies Act wherein liquidation proceedings by way of voluntary liquidation or otherwise are instituted, but the procedure adopted in liquidation of companies is quite different from the procedure in actions for dissolution of partnerships. The High Court alone has got jurisdiction in company matters and they are in the nature of applications or petitions while partnership actions are filed as suits and are cognizable also by subordinate courts. It is therefore considered expedient not to levy a fixed fee in the case of partnership suits irrespective of the value of the subject matter involved in the adjudication. At the outset, it may be observed that it is not correct for the plaintiff to assess it as *a suit for accounts* and value it at any figure he chooses. Merely because accounts are taken in partnership actions, it does not mean that it is akin to a suit for accounts. Generally, in suits for taking accounts, the plaintiff has a right to call upon the defendant to account as the accounting party. In partnership actions, except in the rare case where the defendant is the Managing partner and in sole managemnt of the business, it cannot be said that the plaintiff can call upon the other partners to account for the profit and loss of the partnership. Each of the partners is both a principal and an agent. Therefore, it is not quite correct to say that the plaintiff is entitled to call upon the defendant to account. He can assess the relief he hopes to get as a result of the account taking at any particular figure. Again, it appears that if a decree for a larger amount is passed, in favour of the plaintiff, the additional court-fee that is payable is not realized. Further, where the plaintiff in a partnership action gets his portion of the *assets* of the partnership property, no court fee is realized for the grant of that relief to him. Any proposal that is made for the levy of fee in partnership actions must steer clear of these pit-falls. Generally, it must be conceded that the payment of fee should come out of the assets of the partnership. The fee cannot possibly be ascertained at the outset nor can the fee refer only to the quantum of the plaintiff's share. Therefore, it is recommended that the fee should be collected in two stages. Plaintiff will pay a fixed fee of Rs. 15 when the suit is filed in the District Munsif's Court or the City Civil Court and pay a fee of Rs. 100 if it is filed in the sub-court or the district court. This fee alone will be collected till the final decree is passed in the suit. As a result of the trial and ascertainment of the net assets of the partnership and the ascertainment of portions thereof due to the several partners, the fee payable to Government by each of the partners could be ascertained but the scale of fee will, as in the case of partition suits, be only a half or one-third of the regular fee for possession. Every party who gets a share of the partnership assets which has got a definite value will be under an obligation to pay court-fee due to Government. In all these cases, either the funds will be in court or in the hands of an officer of the court as Commissioner or Receiver and he can be directed to retrench from the money in his hands the requisite court-fee payable by each party and pay the court-fee due. As regards the plaintiff, he will of course get a rebate of the value of the fixed fee paid by him. The value of the entire assets of the partnership as disclosed and estimated in the plaint, and not the plaintiff's share, will determine the jurisdiction of such suits. This may be provided for by a rule made under section 9 of the Suits Valuation Act.

[125] Vide the observations of Mr. Justice Wallace in 50 Mad. 646 at p. 652.
[126] 13 C.L.R. 160; 7 Bom. 125; 7 Bom. 535.

Chapter XXVI.—Suits for Accounts.

99. There is perhaps no section of the Court-Fees Act which is more abused than the provision relating to a suit for accounts. Unlike other kinds of suits, it may perhaps be difficult for a plaintiff to state precisely the amount that may be found due to him on taking accounts. Consequently, under section 7, clause (iv) (*f*) of the Court-Fees Act, the plaintiff is given the liberty to estimate the amount due to him and pray for the recovery of same. If ultimately, as a result of account taking, the plaintiff is found entitled to a larger amount than what he estimated his claim will be, then the plaintiff runs no risk of losing any portion of the amount that may be found due to him as there is no impediment to courts granting such a decree to the plaintiff though it exceeds not only the amount claimed by him but also the pecuniary jurisdiction of the court. The only obligation on the part of the plaintiff is to pay the additional court-fee on the excess amount for which a decree is passed. This is found in section 11 of the Court-Fees Act. When it is remembered that there could be no refund of any portion of the fee already collected where the amount decreed to the plaintiff is less than the amount of claim as estimated by him, it should only be expected that litigants will err on the safer side and put a value even less than the minimum amount for which they expected a decree, as they stand to lose nothing by putting in such a low valuation. Further, if there is any provision by which a plaintiff can pay the fee in two stages, that opportunity will also be availed of by him who would rather elect to pay a nominal fee at the time of the institution of the suit by a deliberate undervaluation of his claim and make good the balance if and when the Court grants a decree for a larger amount. In addition to this, there are the other chances of a suit being settled out of court, withdrawn or dismissed in which case there is absolutely no data to assess the true value of the relief sought and the occasion to call upon the plaintiff to make good any deficiency could obviously never arise. Under these circumstances, it is no wonder that cases where the plaintiff values a suit for accounts at a really approximate figure is the exception rather than the rule. A premium is put on such under valuation from the very language used in section 7, clause (iv) (*f*) of the Court-Fees Act, which permits the plaintiff to value the relief as he chooses. One wonders whether the wording of the Court-Fees Act is a deliberate departure from the provision in the Code—Order VII, rule 2—which detailing the procedure to be adopted, sets out the requirements of a plaint in a suit for accounts by providing that a plaintiff while suing for unsettled accounts shall state *approximately* the

amount for which he seeks a decree. While the Code requires that the plaintiff is under an obligation to assess approximately, the amount that may be decreed to him, the Court-Fees Act appears to give him complete liberty to put it at any figure he *chooses.* [127] Even if Courts are to insist that the plaintiff should approximately value his claim, there are practical difficulties in enforcing the rule. A court cannot, unless it holds a preliminary investigation about the possible results of the taking of accounts come to a conclusion as to the correctness or otherwise of the value put by the plaintiff. Under those circumstances, any rule however emphatic or stringent it may be, that a plaintiff should give the proper valuation and a proper estimate in his plaint, is bound to remain a dead letter. Therefore, while a provision corresponding to that contained in the Code may be inserted in the Court-Fees Act, it cannot go any way towards making a plaintiff properly assess the value of the relief he seeks. Due to the very nature of the relief sought, the persons seeking relief are the best Judges as to what they expect to be the result of the account-taking and should be given the liberty to put what, according to them, is the true valuation. At the same time, experience shows that they invariably undervalue such claims and it is necessary to devise ways and means to counteract any such tendency on their part. The only provision that now exists is found in section 11 of the Court-Fees Act, paragraph (1) of which merely postpones the execution of the decree while paragraph (2) applies only " when the amount of mesne profits is left to be ascertained in course of execution of the decree." It will be apparent that this is no adequate safeguard [128] for the realization of the proper court-fee in such cases. The section pre-supposes the passing of a decree. It may well be as soon as a decree is passed and the litigants get the services of the court in the matter of the ascertainment of the amount, payment might be made by the obligor to the obligee outside court and there may not arise any occasion for the execution of the decree and consequently for the realization of the additional court-fee. Further, as the section stands at present, it only prevents the execution of the decree and does not prevent the court being asked to record an adjustment. If execution has to be levied for the realization of a decree, the whole court-fee paid by the plaintiff will have to be included in costs and realized from the defendant and any sane defendant will only act in such a way as will minimise the amount payable by him. Whatever might have been his contest prior to the passing of the decree, once the decree is passed, he will bow to the inevitable and instead of compelling the plaintiff to pay additional court-fees and swell up the costs and thereby the amount for which execution is levied, the defendant will, if he is wise, pay the plaintiff out of court and even enter up satisfaction. Again, there may be cases where the main contest is about the accountability of the defendant and once that question is settled one way or the other by the preliminary adjudication by the court, parties might settle the matter out of court. Instances can be multiplied to demonstrate the very attenuated and quite inadequate protection given by section 11 of the Act. This state of things cannot be permitted to exist and the responsibility of the plaintiffs to value their claim properly should be brought home to them.

100. One method by which reckless undervaluation may be mitigated is to adopt the view of the Calcutta High Court [129] and to fix a maximum limit for which decrees may be passed corresponding with the pecuniary jurisdiction of the court in which such suits are filed. But the Calcutta High Court did not propound this view as a punitive measure but took the view that any court with a limited pecuniary jurisdiction is incompetent to pass a decree for an amount which exceeds it when it finds that the plaintiff is entitled to such larger amount. A plaintiff who so under-estimates the value of the relief to him and invokes the jurisdiction of an inferior court runs the risk of not getting a decree that will exceed the maximum pecuniary limits of that court. But it is obvious that this is no deterrent factor in the cases of suits filed in the court of a Subordinate Judge, for instance, which has unlimited pecuniary jurisdiction.

101. Another possible method to check this may be to provide that a plaintiff who values his claim at a certain figure should not be given a decree for a sum which is, say, twice the amount for which he values his claim. But this kind of arbitrary interdiction is quite inexpedient and would hamper the discretion of courts and would result in negativing the rights of a plaintiff to get a decree for an amount which the court might adjudge him to be entitled to. Such a rule though it might operate as a really deterrent one cannot be lightly recommended. Further, if courts are shut out from granting a decree above a certain figure, it would obviously result in the loss of revenue that will otherwise accrue if a decree for the full amount is granted and the deficit court-fee collected.

[127] 43 L.W. 300.
[128] It could not but be otherwise as a decree has to be passed (1937) 2 M.L.J. 1 (P.C.) where their Lordships observe that the dismissal of the suit may only be tolerated as *ultima ratio* if it be the consequence of contumacy or wilful and persistent disregard of the rights of the defendants, *ibid*, p. 6.
[129] 13 C.W.N. 493.

102. Considering all these circumstances, the only satisfactory method that could be devised is, while retaining the elasticity in a suit for accounts by permitting a plaintiff or appellant to put his own valuation, and the right of the Courts to grant a decree for whatever amount the plaintiff may be found entitled to on taking accounts, to call upon the plaintiff to incorporate in the plaint an undertaking to pay additional court-fee for any additional amount that he may be found entitled to and make a provision for its collection as a public demand and to introduce a provision by way of penalty, as is enforced in cases of inadequately stamped documents under the provisions of the Stamp Act. The principle of collecting deficit court-fee as a public demand is recognized in the Bengal enactment. There can be no possible objection to compelling a plaintiff to stick to his undertaking to pay the additional court-fee for the additional amount decreed to him which itself is a concession that is shown to him as generally a plaintiff cannot be granted a decree for an amount over and above than what he claimed in the plaint. The other provision will be to collect a penal fee on such an amount, if any, that exceeds the amount claimed. This additional fee is levied as a deterrent measure to discourage a plaintiff from under-estimating the value of the suit. That may be equal to the additional fee that is leviable as a result of an excess amount found due. As this provision is only designed to prevent a deliberate undervaluation and not to penalize a plaintiff who may be really unable to value his claim even approximately it is expedient to invest courts with power to remit the penalty in whole or in part, in cases where they consider it expedient to do so. It is obvious that portion of the excess fee collected which is over and above the fee ordinarily leviable under the rules cannot be included as part of the plaintiff's costs, as in that case, it will not be the plaintiff that is punished for his conduct but a defendant who is innocent. This provision cannot work any hardship to an honest litigant but will certainly make a dishonest one who at present does not stop short of making a bare-faced undervaluation taking shelter under the provisions of the Court-Fees Act and the inability of Courts to prevent it even in cases where they are conscious of it, ponder and pause before he deliberately puts a low figure for the nonce as an estimate of his relief. He cannot obviously predicate at that stage how the suit will terminate, whether it will reach the stage of trial, whether a final decree will be passed or whether it will be compromised or settled out of court. The fear that he may be mulcted with the payment of a duplicate fee which will be collected as a public demand will, to a great extent, result in the plaintiff taking a sober and sensible view of the consequences of his act and endeavour to assess the value of his claim to a fair degree of approximation. The provision for the collection of the fee as a public demand does not of course supersede the provision now contained in section 11 that no execution can be levied unless the deficit fee is paid.

103. It is open to a defendant in an account suit to plead that no amount will be found due by him to the plaintiff. But in several cases the defendant does not stop with that but also avers that on taking accounts, the plaintiff will be found indebted to him and prays that a decree may be passed in his favour against the plaintiff. In such cases he is in the position of a defendant pleading a counter-claim and if he prays for a decree in his favour, he should equally as a plaintiff give an undertaking that in case the amount is decreed, he will pay the court-fees thereon. Where a decree for any specific amount is prayed in the written statement it should be stamped with a fee calculated on that amount. All the other provisions relating to a suit for accounts by the plaintiff will also apply to the case of a defendant getting a decree against the plaintiff.

104. There was a good deal of confusion and uncertainty relative to appeals in account suits but fortunately these have been fairly set at rest by a recent Full Bench decision of this Court.[130] According to this decision a defendant's appeal against a preliminary decree in an account suit must be valued at the same amount stated by the plaintiff as value in the suit.

As regards the plaintiff's appeal against the dismissal of his suit for accounts, it is now settled by a very recent Full Bench decision[131] that the plaintiff cannot change his valuation in appeal if the subject matter of the appeal is co-extensive with that of the suit. This may be given legislative recognition.

Where the subject matter of the appeal against preliminary decree is not co-extensive with that of the suit, the above rule will not apply but the appeal cannot be allowed to be valued on a basis different from that adopted in the suit, as that would be entirely against the scheme of the Act (vide also the paragraph relating to the valuation of appeals). An appeal against the final decree must of course be valued at the value of the actual subject matter in dispute.[132]

[130] (1938) 1 M.L.J. 628.
[131] (1938) 11 M.L.J. 557.
[132] Vide page 139 of Mr. Satyamurti Ayyar's Court-Fees Act.

Chapter XXVII.—Administration Suits.

105. This is a comparatively rare form of action. scarcely instituted in the mufassal. One District Judge expresses the view that this kind of action may well be abolished. "Administration means the management of the estate of a deceased person who has appointed no executor. The object of an administration suit is to have the estate administered under a decree of the court; in such a suit the entire administration of the estate is assumed by court. The suit in its essence is one for an account and for application of the estate of the deceased for the satisfaction of the dues of all the creditors and for the benefit of all others who are entitled, and the court marshals the assets and makes such a decree."[133] "The administration consists, generally speaking, in the payment of the funeral expenses of the deceased, the payment of debts and legacies and in the collection, realization, preservation and distribution of the assets." The Code of Civil Procedure[134] provides that, in an administration suit, the court shall pass a preliminary decree directing accounts to be taken and enquiries to be made and then pass a final decree.

106. The following persons may maintain an administration suit.[135] (1) A creditor of the deceased when his claim is not paid by the legal representative of the deceased, (2) a legatee, whether specific or pecuniary, where the legacy is not paid to him by the legal representative of the deceased, (3) the next-of-kin of the deceased, for their share in the estate of the deceased, (4) an executor or administrator, when there are disputes amongst the legatees or next-of-kin as to the amount of the property left by the deceased and the amount to which the legatees or next-of-kin are entitled.

107. The question arises where a creditor files an administration suit or in the process of administration the claims of creditors are adjudged, whether the creditors who get an adjudication and the liquidation of their dues should not be liable to pay the court-fee on the value of their claim. Such a question came up for consideration.[136] Though the decision was to the effect that no such fee is payable on the claim of the creditors who proved them in an administration proceeding, still, that does not negative the expediency of such a course. Their Lordships held that they could not levy such a fee and therefore did not. At page 38 of the report Mr. Justice Anantakrishna Ayyar turns down the argument that an administration suit should be taken as corresponding to administration of an insolvent's estate and that the reference in Order 20, rule 13, paragraph 2 of the Code of the procedure in insolvency negatives the collection of court-fees on the claims provable in administration suits because under the procedure followed in the administration of insolvents' estates, the claims of creditors are not liable to any fee. His Lordship observes "If the intention of the legislature was that in respect of administration also, *ad valorem* court-fees should not be levied from creditors who seek to file their claims in pursuance of the order of administration passed by a Court, then, we have got a consistent procedure covering these classes of cases. Order 20, rule 13 of the Code only goes to the extent of providing, for the way in which the assets should be distributed among the secured and unsecured creditors, and refers to the Insolvency Act only to that extent and for that purpose; and the rule cannot, as its wording now stands, be taken to expressly cover the question of court-fee also. It is enough to say for the present that, if there is an omission in the Court-Fees Act, the litigant is entitled to take advantage of same"[137]. "After the preliminary decree has been made and creditors have been invited to establish their claims, if any, against the debtor, each creditor, who puts forward a claim not already transformed into a judgment-debt"—this steers clear of an objection raised by Mr. Justice Reilly in 55 Madras case—"may well be required to pay court-fees *ad valorem* on his application, as if it were a plaint in a suit for the recovery of the sum he claims. Such a procedure can be sustained on the analogy of section 11 of the Court-Fees Act."[138] As observed by Mr. Justice Reilly in the Madras case[137] "It may well be that creditors should not on principle be allowed to urge their claims in such suits without paying some court-fee on them. *But that is a matter for legislation.*" This renders it necessary to incorporate such a provision in the Court-Fees Act. In the Suits Valuation Rules Committee's Report, they refer to administration actions as involving adjudication not merely on the claim of the plaintiff but also on the claim of the creditors who may later on come forward with claims in pursuance of the court's order. Neverthelds, they observe, no court-fee can be levied in respect of such claims on the analogy of seection 11 of the Court-Fees Act *as it now stands*. That is also the view taken in the 55 Madras decision where it was held that fiscal statutes should

[133] 61 Cal. 711 at p. 724.
[134] Order 20, rule 13, C.P.C.
[135] Mulla's C.P.C., Tenth Edition, p. 680.
[136] 55 Mad. 26.
[137] 55 Mad. 26 at p. 39.*
[138] 44 C. 890, See also A.I.R. 1939 Rang. 115.

not be construed from analogous provisions in other statutes. In the Note appended to the Suits Valuation Rules Committee's Report it is observed "that a reasonable provision may be made in regard to the claims of creditors whose claims have to be investigated. But it is hard to call upon any creditor who seeks the remedy of an administration suit to pay a heavy court-fee based on the value of the estate. An amendment of section 11 may meet this difficulty."

108. There has been a deal of controversy as to whether an administration suit by a creditor is deemed to be one on behalf of the whole body of creditors. The view propounded in the 55 Madras case is that it is not always so though the heading of the form of a plaint given in the Civil Procedure Code, Appendix A No. 41, is "A creditor suing on his behalf and on behalf of all creditors" but the approved view is certainly that the suit by a creditor is not necessarily a suit on behalf of the whole body of creditors. Nobody can possibly compel the plaintiff-creditor to pay court-fee not only in respect of his claim but on the value of the entire estate. It is therefore necessary that provision should be made for the payment of court-fee where the claim of any creditor be he a plaintiff or a defendant is adjudged. Administration suits are really suits where the Court steps into the management of the entire estate standing in the shoes of the executor or administrator. The present method of taxation as a suit for accounts leaving it to the plaintiff to put his own valuation is not quite satisfactory.

109. Thus in the first class of administration suits, i.e., those which are brought by a creditor or where there should be an adjudication of the claim of any creditor to the estate, if he is a plaintiff, he must pay *ad valorem* fee on the value of his claim and if any other creditor makes any claim in pursuance of notice served, he must pay court-fee on the *ad valorem* scale on the value of the claim he prefers. Almost similar is the case where a legatee for specific legacy files a suit. Where it has a specific value *ad valorem* court-fee should be levied on same. But the plaint in such cases as set out in Form No. 42, Appendix A of the Code does not mention about the administration of the entire estate. If it is prayed for and if in pursuance thereof, any other legatee also claims a legacy or any creditor proves his claim, he must pay court-fees on the value of his claim.

110. But there should be an exemption in the case of those creditors whose claims have fructified into decrees. In such a case, they are creditors to the estate, and have already paid court-fee for an adjudication of their claims. They now merely prove the decree debts in their favour as claimants and they should not be mulcted with any additional fee. While legislating on these matters, Reilly, J., suggests[139] certain points that may be kept in view. He observes that questions as to what should be done in cases where the deceased's estate is insolvent and what should be done where some of the creditors have already obtained decrees against the deceased or his estate, on which they had already paid court-fee must be considered. In the latter case, no doubt, they will be exempted from paying a further court-fee. But in the former, it does not appear why there should be any concession in the matter of the realization of court-fee. Where the principle is to collect the fee on the claims of the creditors as and when they are made, it is difficult to defer the collection till the claims are not only adjudicated upon but are also *satisfied*.

In a recent Calcutta decision*, it was held that in an administration suit by a creditor, till the decree is passed it is the plaintiff who is the *dominus litis* and has the carriage and conduct of the proceedings, and that other creditors impleaded as defendants cannot be said to occupy the position of a plaintiff up to that stage at any rate. Though an administration suit is analogous to a suit for accounts up to a certain stage, the two are not identical for all purposes, at least, so far as the ultimate decision of the court is concerned. Hence where in a suit by a creditor for administration of the estate of a deceased debtor, other creditors are impleaded as party defendants before the preliminary decree and they set out in their written statements their claims against the estate of the deceased aggregating to a certain amount, but the court has allowed certain dividends to be paid to the creditors on a basis of certain per cent upon the amounts *found to have been due to them*, those creditors cannot be ordered to pay court-fees upon the entire amount of their claims, irrespective of what are being actually paid to them as dividends. A suit for accounts ends in a decree for a specific sum of money be it in favour of the plaintiff or the defendant. There is no duty cast upon the Court in such cases to have anything to do with the realization of the assets of the debtor and the distribution of the same amongst the creditors. An administration suit partakes to some extent of the nature of an insolvency or winding up proceedings. The Court realizes the assets in such a way as it thinks

[139] 55 Mad. 26 at p. 30.

* A.I.R. 1938 Cal. 785

proper: it marshalls the assets, according to the rules of administration and distributes them amongst all the creditors in the way recognized in insolvency proceedings. The opinion of Justice Sir Ashutosh Mukerjee in 44 Cal., 890 above referred to was treated as *obiter* and it was decided that court-fee should be levied only on the amount of dividend paid. There is much to be said in support of both views. The collection of court-fee cannot be deferred till the end. Nor under the peculiar circumstances under which a creditor is arrayed as a party in an administration suit, can the court-fee be collected on the entire claim when the estate is able to pay only a fraction of the admitted claim. To hold that court-fee should be paid only on the amount of the dividend irrespective of the claim would put a premium on speculative and reckless exaggeration of claims. It would also run counter to the principle of levy of fee in ordinary suits where the prospect of realization is not taken into account at all. But there are some differences between the position of a creditor in an ordinary suit and that of a creditor in the administration proceedings. The former goes to court voluntarily to realize his claim, while the latter is obliged to prove his claim in administration as otherwise he would be losing his claim altogether. If the estate is insolvent, the former could have invoked the provisions of the Insolvency Act, which is not open in this case. For these reasons, it seems equitable not to mulct him with fees on the amount which he is not able to realize. As it is necessary to collect the full fee on the amount of the claim when it is made, the only way in which a concession can be shown to the claimant who is not able to realize his claim in full, is to refund to him a proportionate fee after the close of the administration. After the final dividend is declared, the creditor should be refunded such portion of the fee on the portion of claim *which he was not able to realize.*

111. Next for consideration are suits by the next-of-kin of the deceased for his share of the estate, or by an executor or administrator where there are disputes among the legatees or the next-of-kin. In the first class of suits the plaintiff must pay the court-fee as for a suit for possession. Where it is the executor that files the suit, for the settlement of the conflicting claims of the legatees or next-of-kin, it is in the nature of an interpleader suit and should be liable to court-fee levied on such class of suits. The procedure recommended for such suits may well be adopted.

112. It may happen in some cases that a suit by a next-of-kin of the deceased may be really a suit for partition of the property of the deceased as between the plaintiff and the other co-heirs, who do not dispute the plaintiff's right to a share, but who do not agree with the plaintiff and among themselves as to the details of the shares they are entitled to and the mode of partition. In such a case the other co-heirs who are impleaded as defendants are in the position of defendants in an ordinary suit for partition and if they ask for their shares being separated and for a general decree for partition between them all, it is proper they must also pay court-fees on their written statements as in a suit for partition. The general principle involved in the above recommendations, is to make administration suits chargeable to court-fee with reference to the reliefs which are to be ultimately granted by court by the administration of the estate.

Chapter XXVIII.—Suits relating to Adoption.

113. Is the real object in a declaratory suit regarding adoption simply the recognition or the repudiation of his status as an adopted son, or is it to get a declaration regarding title to property which flows as a consequence of the recognition of such status? It cannot be denied that the latter is generally the case. For, if it is an action for a declaration of status pure and simple, then suits relating to adoption will fall under article 17-B and be classified among suits which are incapable of valuation. But the Legislature even now has taken out such suits from the category of suits under article 17-B and have put them under a different category altogether. They have also fixed the fee relative to the forum and the jurisdictional value of the suit. The value for jurisdiction is to be the market value[140] of the properties likely to be affected in such declarations regarding adoption and could not be fixed according to plaintiff's pleasure or according to the scheme of valuation under the Court-Fees Act as if it were a suit for possession of such properties. The only point that emerges from these decisions is that these suits are not incapable of valuation. As has been observed, the Legislature in amending column (3) to article 17-A, by which the value of the suit determines the court-fee, has clearly expressed its view that a relief with regard to an alleged adoption is capable of valuation. That has created an anomaly as, if such declaratory suits regarding adoption affects immovable property in the shape of lands, the market value thereof determines the valuation while if a suit even

[140] 50 Mad. 646; 52 Mad. 340.

for the recovery of possession is laid, the land could be valued at ten times the kist which is the statutory value and far less than the former. The result is that suits relating to adoption which affect immovable property only indirectly may in some cases be taxed to a higher fee than suits for recovery of possession of such immovable property. It is obvious that this should not be the case. No new principle is adumbrated here regarding adoption suits. Adoption suits were classified as declaratory suits. They continue to be classified as such. Now a more comprehensive system of *ad valorem* fee is fixed for all declaratory suits including those relating to adoption. There is no departure from the law as it is at present but there is only a clarification of the position. In this connexion the view of Dr. Paranjpe[141] may be read with interest. His view was that transactions by way of adoption are not being taxed sufficiently. "In his opinion, an adoption among Hindus, though it has a religious bearing, is almost invariably an act creating new rights to property. Thus in a Mitakshara family, the adopted son gets an immediately exercisable right to half the ancestral property of his adoptive father. From the point of view of theory an adopted son comes by a windfall either actually or potentially and the transaction is therefore a fit subject for taxation." This is referred to only to show that there is nothing to mark out a case relative to adoption from any other declaratory suit. The recommendations made make no radical departure from the existing law but only removes certain anomalies referred to above.

Chapter XXIX.—Summary Decisions.

114. The absence of a definition in the Court Fees Act as to what a summary decision is, has been deprecated[142] by Judges but it has been judicially interpreted in several decisions. It has been defined as "a decision of a civil court not being a decree in a regular suit or appeal,"[143] as "a decision of a court which hears and determines the matter but does not finally conclude the parties," "a proceeding in which the court makes an order and determines the matter in issue, for the present occasion, in order to prevent some mischief which might ensue, if there was not a mode of coming to some decision at once in the matter,"[144] and also as meaning decisions in "cases where no appeal lies and where the decision of the tribunal which hears and determines the matter is final." Various tests have been suggested by courts for determining what is a summary decision.[145] One such is the existence of a legal necessity to set aside the decision by a regular suit.[146]

114-A. The class of suits that comes under this category, are suits to set aside claim orders under Order 21, rules 63 and 103 of the Code though there may be other orders also under particular enactments, from which no appeal is provided for and which could be set aside only by a regular suit. If such a suit is not instituted within a prescribed period, the summary order will become final and binding on the parties. At present a fixed fee of Rs. 15 is levied in such cases. Is it adequate? Section 7, clause (viii) refers to suits to set aside an attachment of land or an interest in land or revenue. The fee is leviable according to the amount for which the land or interest was attached. This is coupled with a proviso that where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest. If the property of a person not a party to a suit is attached in execution of a decree and the aggrieved party files a suit for a declaration that the property should not be attached in execution of a decree against another person, then it partakes only of the nature of a declaratory suit and even then as under the present law, Schedule II, article 17-A, the fee will be Rs. 15 or Rs. 100 or Rs. 500 as the case may be. If the plaintiff chooses to tack on a consequential relief to his declaration, if he prays for instance for an injunction restraining the decree-holder from bringing his property to sale in execution of the decree, then it attracts the provision of section 7, clause (iv) (*c*) and the Madras proviso thereto. In such cases, the relief should not be valued at less than half the value of the immovable property. In case the property has been attached and the sale has been held and the plaintiff has been deprived of the possession of the property, section 7, clause (v) comes into operation and the value of the suit is the value of the immovable property. The provision in section 7, clause (viii) does not fit in with any of these known kinds of action. It is clear that a suit to declare the plaintiff's title to the property must either be construed as a bare declaration falling under Schedule II, article 17-A or a declaration with consequential relief, falling under section 7, clause (iv) (*c*) and the Madras proviso

[141] Report of the Indian Taxation Committee, paragraph 289.
[142] Vide Mr. Satyamurti Ayyar's commentaries on the Court-Fees Act—Introduction.
[143] 2 Bengal Law Reports 235.
[144] 5 Bengal Law Reports 162.
[145] 6 Bombay H.C.R. 39.
[146] Per Wadsworth, J., in 59 Mad., 882, at p. 883.

thereto, or one for possession of the property in which the title or declaration is merged and becomes an action under section 7, clause (v). The fee that is now leviable under section 7, clause (viii) is too high than is warranted if we consider the true scope of the suit. It is therefore suggested that such an action should be construed to be only a suit for a declaration or one for declaration with consequential relief where the consequential relief falls short of possession. In the recommendations that have been made regarding declaratory suits, the view is adumbrated that where the consequential relief falls short of possession, all suits for declaration whether with or without consequential relief must be taxed uniformly. The policy of the law is that where a summary remedy is provided, parties should normally invoke that jurisdiction and should not necessarily institute regular suits when the same relief could be had in a summary proceeding. That appears to be the reason why separate provision is made for suits which become necessary if a party gets an adverse order in a summary proceeding. Even though a suit to set aside a summary proceeding is properly construed to be only a suit for a declaration of the claimant's title and consequential relief and therefore should logically be treated as a suit under section 7, clause (viii), still, there is a differentiation in the levy of court-fee in those two classes of suits. There being no difference in the relief sought, the only difference is that the plaintiff in the one case was a party to a summary proceeding and is filing a suit to set it aside and in the other case, a party without invoking the summary jurisdiction provided, files a regular suit. There is no substantial reason for such differentiation. Whether a person files a claim petition and being defeated files a regular suit to establish the title or whether he straightaway files a suit to establish his title to the property and for a consequential relief in the shape of an injunction or the like, the essence of the action is the same.

115. It is therefore recommended that suits to set aside summary orders must be taxed as suits for declaration. The classes of actions under section 7, clause (viii), viz., suit to set aside an attachment will also continue with this modification that the fee collected will be as in a declaratory suit, i.e., a moiety, on the value of the subject-matter of the suit. The subject-matter of the suit, in such suits and also in a suit to set aside a summary decision is taken to be the amount for which the land or interest in land was attached but where the amount exceeds the value of the land or interest, then, the value of the land computed as if the suit were one for possession of such land or interest. The subject is further discussed in the next paragraph. A question might arise as to why there should be two provisions, one for a suit to set aside such summary decisions and another for a suit to set aside the attachment of land, etc. It is necessary because the scope of the suits provided for in Schedule II, article 17 (1) is wider than those contemplated in section 7, clause (viii).

116. The provision that the valuation should be according to the lesser of the two values, *i.e.*, the amount of the decree or the value of the subject-matter affected, merely gives effect to the decisions in the several High Courts[147] though those decisions relate only to the question of jurisdiction. The question of court-fee could not have arisen in those decisions as the Court Fees Act provides only a fixed fee. The collection of a fixed fee of Rs. 15 in all suits whatever its type or magnitude, whether it refers to a declaration as to non-liability to a decree of Rs. 50, for instance, or to establish the question of title to property worth several lakhs is quite inappropriate especially when it is seen that the nature of those actions, as has been declared by the Privy Council[148] is in essence a suit for declaration.

117. The suit may be one by the defeated claimant or by the decree-holder on a claim being allowed. If the suit is by the decree-holder, it is clear that he is interested only in the amount of his decree and the value of the property is irrelevant and cannot by any means be held to be the subject-matter in the later suit. Therefore, the prevailing practice that the amount of the decree in execution of which the property is attached determines the value of the suit when it is lesser in value than the property itself is the only proper method of the assessment of the value for purposes of court-fee and also for jurisdiction. The difficulty arises where the suit is by the unsuccessful claimant. The question is whether the subject matter of his suit can be considered to be the decree amount, in execution of which the claimant's property is sought to be attached, or the entire value of the property. It is clear that even for the adjudication of the smaller relief, namely, that the property is not liable to be attached in execution of the decree, there is a necessary adjudication about the title of the claimant to the property with a consequent negation of the title of the judgment-debtor to same. To this extent, the title to the property is in question. Whether it is in

[147] 30 Mad. 335 (F.B.); 38 All. 72; 55 All. 315 (F.B.); 56 M. 716.
[148] 35 Cal. 202 (P.C.).

question for a limited purpose, namely, the adjudication of the right of the decree-holder to proceed against that property in execution of the decree or otherwise, the fact remains the Court has to adjudicate upon the title. In that view it is clear that a suit is more or less a suit for a declaration of the plaintiff's title to the suit property and the fee should be levied accordingly.[148-a] A possible hardship might arise in cases where property of large value is attached in execution of a decree for a comparatively small amount in which case an unsuccessful claimant may be forced to pay court-fee as for declaration of title to the entire property even though the immediate purpose on hand is to get rid of the attachment of the property at the instance of the decree-holder in execution of a decree for a small amount. Hence the other view taken is that the *whole* of the property is not in dispute and the attachment and sale which might take place in pursuance of it does not relate to the whole property.[149] Against this, is again the consideration that in claim proceedings the claimant has the benefit of an adjudication by the Court and a preliminary sifting as regards the tenability of his contention and his right to the property, and in case those rights are negatived he is to be deemed to be a person who has not got possession and consequently perhaps no *prima facie* title to the property. It may not consequently be unjust or unfair to make him pay a fee for declaration of his title. In this connection it is but proper to differentiate between cases where the judgment-debtor is impleaded as a party and cases where he is not a party.[150] There is a conflict of views as to whether he is or is not a necessary party.[151] The view taken by our High Court is that he is not a necessary party even in a claim proceeding[152]. The proper view appears to be that the judgment, debtor cannot be held to be a *necessary* party. But it is open to the plaintiff where he apprehends that his title to the property will be challenged by the judgment-debtor, to implead him as a party to the suit so that there may be a final adjudication regarding title. Otherwise even though he establishes his title as against the decree-holder and succeeds in his suit, though his claim that his property should not be attached in execution of that particular decree is allowed, there is still the danger of his title to the property being challenged by the judgment-debtor himself who will not be bound by that adjudication in a suit in which he is not impleaded. Therefore when the unsuccessful claimant apprehends a contest not only from the decree-holder but from the judgment-debtor as well, and considers it necessary to implead the judgment debtor, it is virtually a contest between the claimant and the judgment-debtor regarding their rival claims to the suit property. In that case there is absolutely nothing to differentiate this class of " Suits to set aside summary decision " from suits for declaration of title. In such cases it is but proper that the fee as leviable in suits for declaration relating to the suit property should be levied. Of course it is observed in a decision of the Allahabad High Court,[153] that even if a judgment-debtor is impleaded in such a suit he is only a *pro forma* party. That observation is against the view of the same High Court in their earlier decisions[154] one of which[155] was not referred to at all. If at all anybody has a vital interest in the matter of the adjudication of the title to the property, it is the ostensible owner thereof, namely, the judgment-debtor and to call him a *pro forma* party as if he is there simply to watch a fight going on between the decree-holder on the one hand and the claimant about his property on the other, it is submitted, is hardly a correct appreciation of the scope of the suit. A distinction between those suits to which the judgment-debtor is a party and against whom a distinct relief as a declaration of title to the property is claimed in addition to the declaration claimed as against the attaching creditor and the suits where the judgment-debtor is not impleaded at all, should necessarily be drawn, as the scope of the suits are entirely different.

Where the prayer in the plaint is not only for the cancellation of the attachment but also for a declaration that the judgment-debtor has no interest in the property, the value of the suit is the value of the entire property claimed by the plaintiff.[156] As observed by the Privy Council[157] the value of an action is its value to the plaintiff. If that criterion is applied, the suit ought to be valued as with reference to the relief sought by the plaintiff. There is yet another decision [158] of our court where the plaintiff sought the cancellation of a claim order and for a declaration of the plaintiff's title to the property, to raise the attachment and for a permanent injunction, and it was held that the substance of the relief sought was a declaration that the property was illegally attached which the claimant prayed should be set aside and the rest of the prayers were characterised as " mere words." The

[148-a] See the recent decision of the Calcutta High Court in 43 C.W.N. 609 on the quest[illegible]aluation for purpose of jurisdiction in such cases.
[149] 30 Mad. 335 (F.B.)
[150] 55 A. 315.
[151] 28 A. 41 at p. 43.
[152] 30 Mad. 335.
[153] 55 A. 315.
[154] 17 A. 69; 28 A. 41.
[155] *28 A. 41.*
[156] 39 M. 602.
[157] 35 C. 202.
[158] 56 Mad. 716.

Privy Council decision[159] was also relied on but that was only for the purpose that in spite of unnecessary prayers, the substance of the suit should be looked at to determine what the court-fee payable is. Reference is made to both the earlier Madras decisions[160] and without actual dissent the tenor of the judgment appears to be that the subject-matter in such a regular suit by the claimant is the decree debt for which the attachment is effected and not the entire property attached.

118. These conflicting views are certainly embarassing and should be set at rest by the intervention of the legislature. The judgment-debtor not being a necessary party to this class of suits, it may well be presumed that if the claimant impleads him, it is not for the limited purpose of getting the property exempted from the particular attachment, but to get a declaration regarding his title, as against the judgment-debtor. Such an adjudication will be binding on the judgment-debtor regarding his title to the property and will be *res judicata* in subsequent proceedings. One fails to see how such a suit differs in its character and scope from any other suit for declaration of title to property. As the title to property is one and homogenous, a declaration of title to a part of it, or for a particular purpose cannot but have the result of an adjudication of title to the whole of it. A defeated claimant will thus get the larger relief of a declaration of title under the guise of a single suit to set aside a summary order. Such loopholes should be completely shut out. The Full Bench decision of our Court[161] seems to suggest[162] that only where the plaintiff seeks to get a specific relief against the judgment-debtor and the plaint contains a specific prayer of declaration against the judgment-debtor, the subject-matter should be taken to be the entire property. But according to the oft quoted decision of the Privy Council[163] it is the substance of the reliefs sought and not its form that counts. Viewed from that standpoint, it is immaterial whether the plaint contains a specific prayer for declaration of title or not. It can justly be presumed that nobody will implead a party unnecessarily. If a plaintiff impleads the judgment-debtor to the suit when he is under no obligation to do so, it could be only with the object of obtaining a complete adjudication of the title to the property. It is of course for the court to determine the exact scope of the suit. If the judgment-debtor is impleaded it should be deemed to be a suit for declaration of title to the property as against the judgment-debtor and as such an adjudication even for the limited purpose of considering the validity of the attachment finally decides the title to the whole of property, the subject-matter of the suit should be deemed to be the entire property. It cannot be a hardship to the claimant for it is he who is enlarging the scope of the suit by impleading the judgment-debtor and he does so, as he considers it expedient to get an adjudication about his title to the property. Hence it is but proper and logical to conclude that the entire property involved should be taken as the subject-matter in the suit and fees levied thereon.

CHAPTER XXX.—SUITS BETWEEN LANDLORD AND TENANT.

119. Suits between landlord and tenant are provided for in section 7, clause XI and Schedule II, article 5. Of course claims for money be it rent or otherwise are simple suits for money. Where the landlord seeks to eject a tenant, the fee is according to the amount of the rent of the immovable property to which the suit refers payable for the year next before the date of presenting the plaint.[164] The main tenancy legislation is the Madras Estates Land Act and the Malabar Tenancy Act. The Madras City Tenants Protection Act is a comparatively minor enactment.

120. The schedules in the Madras Estates Land Act consist of two parts, suits and applications to be disposed of by a Collector. Under the recent Act, certain proceedings which were initiated by suits under the old Act are now included among the category of applications. The reason for such transformation is not set out clearly but it is presumed these changes have been made for expeditious disposal of those matters. Taking such revenue suits, section 55 of the Estates Land Act provides for *suits to obtain a patta*. The present provision is found in section 7, clause (xi) (*c*) of the Court-fees Act. The word used there is "for delivery by a landlord of a lease." The phraseology may be changed to accord with the wording of section 55 of the Estates Land Act and the present fee collected under the Court-Fees Act may continue. The court-fee payable on the suit is remitted but a memorandum of *appeal remains* chargeable. That might also continue as it is thought that some concession should be shown for such classes of suits. Section 56 of the Estates Land Act refers to a suit *to enforce acceptance of patta*. This corresponds to section 7, clause (xi) (*a*). The wording may be changed suitably. Here also the suit is exempted from

[159] 35 C. 202.
[160] 30 M. 335; 39 M. 602.
[161] 30 Mad. 335.
[162] That has been so construed in the later decision in 39 Mad., 602.
[163] 35 C. 202.
[164] Section 7, clause XI, (CC) Court-Fees Act.

court-fee while the appeal against a decree therein is liable to court-fee. A suit under section 77 *of the Act* is now charged under section 7, clause (i). But most of these suits are of small cause nature or suits cognizable by a court of small causes, but for the special jurisdiction conferred on revenue courts, and at present the rate leviable is on the Original Side scale and not at the reduced scale applicable to those classes of suits, as they are triable by revenue courts alone. Now an uniform fee is suggested both for small cause and original suits and therefore the distinction may not be of any importance. But if the scale on original suits be not reduced, it is for consideration whether the rate chargeable for suits under section 77 of the Estates Land Act should not be on the small cause scale.

Till recently in suits under section 95 (1) and (2) and section 112 of the Act, a fixed fee was levied on memorandum of appeal in these cases but *it was pointed* out[165] that it operated as a hardship in some cases[166]. Now such suits are liable to an *ad valorem* fee on the arrears of rent forming the subject-matter of those suits. The plaint is exempt in these cases but a memorandum of appeal is liable to court-fee under article 1, schedule I. Special provision may well be made for these classes of suits in the general section relating to suits between landlord and tenant.

In suits under section 136, and 149 of the Estates Land Act *ad valorem* fee is leviable on the amounts which are the subject-matters of these claims with this proviso, that where they are akin to small cause suits or suits of a small cause nature, the lower scale of fee applicable to small cause suits alone should be levied if the two scales are maintained.

Suit under section 151—This is provided for in section 7, clause (xi) (*cc*). There may be ejectment suits filed otherwise than under the Estates Land Act, against an ordinary lessee or lessee holding over. It is desirable to provide that in cases where the lease has been given for a premium or for money advanced in addition to the rent reserved court-fee shall be payable not only on one year's rent but also on the amount of such premium or advance on the analogy of section 7, clause (x) (*c*) of the Court-Fees Act and article 35 (*c*) of Schedule I of the Stamp Act. For suits under section 151 (2) of the Estates Land Act there are appropriate provisions in the Court-Fees Act, section 7 (1) and section 7 (iv) (*d*) depending on whether this is a suit for money or an injunction.

121. Coming to applications they are all chargeable under Schedule II, article I with a court-fee of As. 12. Certain proceedings which are now classified as applications were suits under the Estates Land Act prior to the recent amendments. Section 30 of the Estates Land Act provides for an application for enhancement of rent payable by a ryot. This could be initiated only by a suit under the old Act. A converse case is an application under section 38 of the Act for reduction of rent. Section 40 provides for commutation of rent. These three provisions refer to the determination of rent. Suits for enhancement of rent are provided for in section 7, clause (xi) (*b*) of the Court-Fees Act, suits for reduction of rent are covered by section 7, clause (xi) (*f*) and suits for commutation of rent have been brought under article 17-B of Schedule II of that Act. Applications under sections 102, 123 and 160 of the Estates Land Act, were also originally filed as *suits* and now under the amended Estates Land Act as *applications*. When the Legislature has deliberately taken them out of the category of suits and catalogued them amongst applications, the fiscal statute has to follow the general policy enunciated by the main statute and fees could not be levied as in suits as hitherto. Still the fee of As. 12 is rather low in such classes of applications inasmuch as the orders are treated as *decrees* for appeal. It is therefore recommended that a uniform fee of Rs. 2 at least be levied.

Applications under section 68 of the Estates Land Act for permission for depositing rent into the office of the Collector are chargeable now as applications under Schedule II, article I with a fee of As. 12 though in accordance with the special provision in Schedule II, article 1 (*b*) of the Court-Fees Act a special item is found for application to deposit in court. The fee of As. 12 may now be prescribed for permission to deposit the rent either in the office of the Collector or the court.

With reference to deposits of rent, in the rules framed under the Estates Land Act it is found that a fee of As. 4 for every such deposit of Rs. 25 with an additional As. 4 for every Rs. 25 or part of Rs. 25 in excess is directed to be levied subject to a maximum fee of Rs. 5 from an applicant *for deposit*. It is doubtful whether the levy of a fee for the applications to deposit, and a fee for the deposit itself, will not increase the burden of fees and tax too much. Section 215 of the Madras Estates Land Act gives the Government power

[165] 52 Mad. 972.
[166] 52 Mad. 872 is now overruled by I.L.R. (1937), Mad. 980.

to frame rules for fixing table of fees, etc., under the Act. Though the language is wide and might even cover suits chargeable with court-fee under the Act (though it is doubtful), of course, till such rules are framed fixing separate tables of fees for suits or applications, under the Estates Land Act, it might be brought under the provisions of the Court-Fees Act.

Schedule II, article 5 of the Court-Fees Act provides for a plaint or memorandum of appeal in a suit to establish or *disprove a right* of occupancy. The suits contemplated by the Estates Land Act in which the question can be agitated, are those covered by section 55 (suit to obtain a patta), and section 56 (suit to enforce acceptance of a patta). Under section 7, clause (xi) (*cc*) and (*e*) there is provision for suits for the recovery of immovable property from a tenant and the converse suit to recover the possession of occupancy from which a tenant has been illegally ejected by the landlord. The suit contemplated in Schedule II, article 5 is not the suit before the revenue court under sections 55 and 56 of the Estates Land Act. Of course, under section 189 of the Estates Land Act, it is provided that no civil court in the exercise of its original jurisdiction shall take cognizance of any dispute or matter in respect of which a suit or application might be brought or made. There is thus a provision for the ouster of the jurisdiction of civil courts and maintaining the exclusive jurisdiction of the revenue courts. But when the landlord is not a landlord within the meaning of the Act and a tenant not a ryot, the jurisdiction of civil courts either for rent or for ejectment is not taken away. Therefore article 5 of Schedule II of the Court-Fees Act has to be retained and that applies to cases in ordinary civil courts where the subject-matter is not cognizable by a revenue court. For such classes of suits, the present fee of As. 8 is obviously inadequate, while suits of a similar character under the Estates Land Act are chargeable to much higher court-fee under section 7, clause (xi) of the Court-Fees Act according to the amount of rent stated as payable for the year next before the date of the presenting the plaint. This has to be amended accordingly.

It is for consideration whether in the case of applications under sections 30, 38 and 40 of the Estates Land Act it is not expedient to frame rules under that Act fixing the valuation in such cases and the fees payable therein. In cases of enhancement or reduction of rent, it is clear that the difference between the existing rent and the rent sought to be fixed indicates the relief sought and court-fees might be collected on the basis of valuation at ten times the difference. This is the rule promulgated in Bengal under the Bengal Tenancy Act, section 38.[167]

As regards commutation of rent, the value of one year's rent according to the rate at which it is sought to be commuted may be fixed as the value of the subject-matter of the case and an *ad valorem* fee assessed thereon.

122. Under the Malabar Tenancy Act (14 of 1930) also there are applications and suits. Such applications lie under sections 13 (1), 22 and 31 of the Act. Proceedings under section 30 of the Act though treated as applications under the Act are generally suits under the general law of landlord and tenant and provided for in the Court-Fees Act, section 7, clauses (xi) (*b*) and (*f*). All these applications by the landlord or the tenant, entail fairly important judicial investigation as to fixation of rent and could well be made liable to a higher fee than what are levied on ordinary applications. In the case of applications under the Estates Land Act a fee of Rs. 2 is suggested. A similar fee may also be provided here.

123. As regards appeals, there is lack of uniformity of treatment between appeals under the Estates Land Act and the Malabar Tenancy Act. Some of the suits under the Estates Land Act are exempt from the payment of fee but the memoranda of appeal are not so exempt. But these are treated only as appeals from orders. On the other hand, section 50 of the Malabar Tenancy Act providing for appeals from orders passed under the several provisions of the Act, viz., sections 12, 23, 25, 30, 34 to 36 lays down that appeals shall lie *as from decrees*. Consequently it was held by our High Court[168] that court-fee should be levied on such appeals as in decrees. This differentiation in the levy of fees in similar matters, depending on whether they arise under the Estates Land Act or the Malabar Tenancy Act is hardly justifiable. It is submitted that all such appeals may be treated as appeals from orders thus placing them on the same footing. Legislative interference is necessary as under section 50 of the Malabar Tenancy Act, the decision of the court cannot but be what it is now.

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[167] See 59 Cal. 997.

[168] Per Burn J. in S.R. No. 22825 of 1932 cited in extenso in Mr. Satyamurti Ayyar's commentaries on the Court-Fees Act, p. 554.

124. *Malabar kanom.*—This is dealt with under the heading of mortgage suits as a kanom is a combination of a mortgage and a lease.

Chapter XXXI.—Matrimonial Suits, etc.

125. Whether matrimonial proceedings are commenced by a plaint or by a petition, all of them are suits and are governed by the personal law of the parties or by statute law. Such suits are for restitution of conjugal rights or for establishing, annulling or dissolving marriages.

126. *Restitution of conjugal rights.*—Suits by Parsis and Christians are governed by the Parsi Marriage and Divorce Act, XV of 1865 and the Indian Divorce Act, IV of 1869. They make provision for suits for restitution of conjugal rights and there are specific provisions in the Court-Fees Act, Schedule II, articles 20 and 21, prescribing the fee leviable in such proceedings. Curiously however in article 20, a proceeding under the Indian Divorce Act is mentioned as a *petition* while in the case of the Parsi Marriage and Divorce Act, the proceeding is referred to as a *plaint*. But there is absolutely no difference between the two and whether the proceedings are initiated by a plaint or by a petition, they are registered as suits. In the case of persons to whom the above two Acts are inapplicable, there is no specific provision in the Court-Fees Act and they are now valued under Schedule II, article (vi) (article 17-B under the Madras Act) as one where the subject-matter could not be estimated at a money value and the fee varies according to the forum. Under the earlier Court-Fees Act, there was an article, namely, article 15, Schedule II, which prescribed a fee of Rs. 5 for a plaint in " a suit for the possession of a wife ". This article was repealed by the Code of Civil Procedure, Act V of 1908, Schedule IV, and a suit for possession of a wife is not one of the recognised forms of action now. It is a moot point whether the plaintiff suing for restitution of conjugal rights can value the relief he claims at any specific amount. In a decision of the Calcutta High Court,[169] it was pointed out that though it may not be possible to value satisfactorily the subject-matter of such a suit, still, there are several criteria available to enable a plaintiff to arrive at a fixed valuation and their Lordships refer to some of them, namely, " the dower, the sum of money which the husband might aver to be in the possession of his wife, the extra cost of domestic assistance for the performance of household work which the husband may have to incur in the absence of his wife, etc." With due deference to their Lordships, it is rather difficult to appreciate this highly mechanical assessment of conjugal rights, and the right of consortium which a husband is entitled to have,—a right based on sentiment and affection rather than one that lends itself to assessment from a materialistic point of view. Still, this is referred to, to show that there is a possibility of the plaintiff assessing the relief at a money value and this class of suits need not necessarily be one that should be considered as incapable of valuation. In fact, in several Provinces the possibility of such assessment by the plaintiff has been taken for granted and a minimum value for such classes of suits fixed. In Lahore, these suits are to be valued at not less than Rs. 200, in Nagpur at not less than Rs. 400, and in Oudh the figure varies between Rs. 100 and Rs. 400 and in the Report of the Madras Suits Valuation Rules Committee, it is recommended that it should not be below Rs. 200.

Where a petition under the Indian Divorce Act or a plaint under the Parsi Marriage and Divorce Act for restitution of conjugal rights is filed, the institution fee is Rs. 20 under articles 20 and 21 of Schedule II of the Court-Fees Act. In the case of the proceedings under the Indian Divorce Act, they could be initiated only in the High Court or in the District Court which court is defined to be the principal court of original civil jurisdiction and in the case of the Parsi Marriage and Divorce Act, there has to be a special court called the Parsi Marriage and Divorce Court. Thus, where these proceedings are to be adjudged only by such superior courts, the court-fee that is collected is quite inadequate. It may be the policy of the law that matrimonial matters should not be heavily assessed as they relate to the question of status. But an anomaly flows from this, namely, in the case of matrimonial suits that are not covered by any specific enactment, the plaintiff has to pay a fixed fee under Schedule II, article 17-B of Rs. 15, if instituted in a District Munsif's Court or the City Civil Court, or Rs. 100 if filed in a sub-court or district court. Thus, if a Christian institutes a suit under the Indian Divorce Act in a district court, the fee that is now collected is Rs. 20. If he files it in the City of Madras, it has to be filed on the Original Side of the High Court. As the proceeding is treated as a petition at the time of its institution, the fee will be Rs. 20 but as has been already stated, though filed as a petition, it is in reality a suit and registered as an original matrimonial suit. The fee leviable for such a suit should be Rs. 225. Perhaps the fee of Rs. 20 was fixed at a time when there were no *ad valorem* fees on the Original Side and suits were commenced on a notice of motion. Similarly, if a Parsi files a suit, a special court has been constituted to try that suit. But

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[169] 39 C.W.N. 131.

if a Muhammadan or Hindu files a similar suit, the fee payable is Rs. 100 under article 17-B if it is in the district court and Rs. 225 if it is in the High Court. These are instances where on account of the accident of there being specific Acts regulating the rights of parties in matrimonial actions, the fee payable varies. On the other hand, it is still possible for a plaintiff to sue for a declaration that the defendant is his wedded wife and for the right of consortium and to bring it under section 7, clause (iv) (*c*) as for declaration and consequential relief. In that case, he can value the suit at any figure he chooses, even at a nominal sum as Rs. 5 or Rs. 10 and pay a few annas as court-fee. It is therefore necessary to revise the fee payable for such actions.

In the cases of Indian Christians and Parsis, it is a matter for consideration whether the superior tribunals alone should be invested with the jurisdiction. When the tendency is to enlarge the jurisdiction of the inferior courts due to the admitted efficiency and competency of the Judges who preside over such courts, it may not be necessary that the jurisdiction under the Indian Divorce Act and the Parsi Marriage and Divorce Act should be exercised only by superior courts of the country. That the circumstances which might have justified those provisions do not exist at present will be clear by a reference to another statute, namely, the Native Converts Marriage Dissolution Act. There, consequent on conversion to Christianity of the husband or wife, either of them can call upon the convert to come and live with him or her and if the other party refuses, he has simply to apply to the Court for a dissolution of the marriage. The fee that is prescribed for such a petition is Rs. 5 and the jurisdiction is vested in the district court and in the City of Madras in the principal court of original civil jurisdiction. Even the City Civil Court has no jurisdiction and such proceedings have to be initiated in the Original Side of the High Court on a court-fee of Rs. 5. This Act was passed as early as 1886 and at that time there was no City Civil Court, which was established only by Act VII of 1892. Therefore, these petitions have to be filed on the Original Side of the High Court. While considering and recasting the Court-Fees Act, there could only be a suggestion for the amendment of other exactments. It might have been the policy of the law, as has been already stated to tax these kinds of suits lightly. However, in respect of suits for restitution of conjugal rights under the provisions of the Indian Divorce Act or the Parsi Marriage and Divorce Act, the fee may be raised from Rs. 20 to Rs. 30. This has been done in several of the provinces as in Bihar and Orissa, Bombay and the United Provinces.

As regards such suits which are not covered by the above Acts, it may be left to the plaintiff to assess the value as he chooses. But any under valuation by a plaintiff so framing the reliefs as to bring them under section 7, clause (iv) (*c*) ought to be discouraged. Consequently it is desirable to fix a minimum value for such suits. Values ranging from Rs. 200 to 400 are fixed in Lahore, Nagpur and Oudh and in the Suits Valuation Act Rules Committee also, there is a recommendation of a minimum of Rs. 200.

It is therefore recommended that a minimum fee of Rs. 15 which is the *ad valorem* fee on the new scale recommended on the valuation of Rs. 200 may be levied in the case of such suits. This does not shut out a plaintiff valuing the relief as he chooses and paying *ad valorem* value thereon. Therefore, if a plaintiff desires to file his suit in a Subordinate Judge's Court, he will have to value it at a figure that will give a Subordinate Judge's Court, jurisdiction and at the same time he will render himself liable to pay a higher court-fee.

127. *Suits for dissolution of marriage, declaration of nullity of marriage or for divorce*—These can well be classed with suits for restitution of conjugal rights and if filed under the Parsi Marriage and Divorce Act, may be made liable, to a fee of Rs. 30. In suits for dissolution of marriage if filed under the Native Converts Dissolution Act, which has to be filed in a district court or a High Court, the fee of Rs. 5 is ridiculously low and might be brought in a line with similar petitions under the two Acts aforesaid. Though in cases not covered by the Act, a plaintiff or petitioner may have to pay a heavy fee if he files a similar suit in the district court or the High Court, this concession of a lighter fee of Rs. 30 is shown to cases arising under the several Acts for the reason that the parties are thereby prevented from choosing an inferior tribunal and are compelled to initiate the proceedings in the superior courts. Unless that restriction is taken away, it will be hard to mulct them also with a heavy fee because they are forced to invoke the jurisdiction of a superior tribunal.

128. *Suits for establishing a marriage.*—This is a comparatively rare form of action and it does not fall within the provisions of any of the matrimonial Acts above referred to. Consequently, if such a suit is instituted, the plaintiff will have the option to value it as he chooses subject in that case also to the minimum fee of Rs. 15. It is no doubt true that if a suit for establishing a marriage is filed, it could be, if the petitioner is a Christian, filed

as a declaratory suit in the District Munsif's Court but if he desires to dissolve the marriage, he must file it in a District Court. But as I already stated, it is a matter that can be cured only by suitable amendments to the respective enactments. As the statute law stands at present, covering only certain classes of cases, it is not possible to have a homogeneous scale of fees in all matrimonial suits. The above recommendations will simplify the levy of fees in these cases as far as possible.

129. *Co-respondent.*—Where a husband claims damages[170] from a co-respondent[171] on the ground of his having committed adultery with the petitioner's wife, it is only a claim for money. There is no reason why the petitioner (or plaintiff) should not pay the court-fee on his claim. It is therefore recommended that where there is a specific prayer for damages, *ad valorem* fee on the amount claimed should be levied as on a distinct subject in addition to the fee leviable on the petition or plaint. Under the present law such a levy is not permissible[172].

130. *Counter-claim.*—Section 37 of the Parsi Marriage and Divorce Act (III of 1936) provides that the respondent can counter-claim for any relief that he may be entitled to under the Act. If so, it follows that the counter-claim must be assessed to court-fee as in the case of a plaint.

130-A. Suit to establish a right to the custody or guardianship (including guardianship for the purpose of marriage) of a minor is a rare form of action, as the Guardian and Wards Act provides for proceedings being initiated in such matters by petitions under the Act. Still it has been thought necessary to make provision for these suits and the Suits Valuation Rules Committee has recommended that they may be valued in the same manner as the matrimonial suits referred to above. This recommendation may be adopted and a provision made that the suits shall be valued at any amount that the plaintiff chooses, subject to a minimum of Rs. 200.

Chapter XXXII.—Interpleader Suits.

131. In the absence of a specific provision for such suits in the Court-Fees Act, a fixed fee is collected, treating them as incapable of valuation. Though the plaintiff has no beneficial interest in the subject-matter of the suit and only initiates the proceedings for the rival parties to establish their title to the property, still the complexity of the litigation and the time and labour involved in the trial are in no wise less than in any other class of suit involving a declaration of title to property of similar value. The famous Tanjore Palace suit is an instance in point. The subject-matter was valued at several lakhs of rupees, and comprised several villages in the fertile plains of the Tanjore district. There were several claimants. Intricate questions of law and fact were involved and the trial took years. The Government had to appoint a Special Judge to try the suit and even established an additional court. It engaged the time of several benches of the High Court for very long periods. It went up to the Privy Council. In such a suit the fee collected in the Subordinate Judge's Court as institution fee was the paltry sum of Rs. 10.* It is not a case of the value of interest at stake being small. It was several lakhs of rupees. Several leading members of the Madras Bar were retained. It is not a case where the trial was short. It took years. It is not a case of parties being unable to pay, for the claimants were almost all of them wealthy people and one or two of them were Indian potentates. Still the fee collected is so ridiculously low. It is therefore necessary to remedy this defect.

The only solution appears to be the assimilation of the practice followed in cases where the petitioner in an application for the issue of probate or letters of administration is not in a position to pay the necessary duty at the time of filing the petition. In such cases the court appoints an interim administrator for raising the necessary amount from the estate to pay the duty. It is only a case of deferred collection. It is recommended elsewhere that courts should have powers to defer collection of court-fees in proper cases. This is such a case where that provision can be usefully applied. The plaint in an interpleader suit should set out the actual valuation of the subject-matter and the court-fee ordinarily payable as in a suit for declaration regarding the subject-matter of the suit. A fixed fee say Rs. 15 when the suit is filed in a District Munsif's Court or the City Civil Court and Rs. 100 where it is filed in a Sub-Court or a District Court may be levied and the payment of the balance may be deferred to a later date as the court might direct. Usually in such suits, a receiver is appointed and out of his collections the court-fee due to Government may be paid. When a decree is passed in such a suit the successful decree-holder must pay in the full fees payable or the balance that may remain to be paid. Provision could be made

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170 Section 34, The Divorce Act (IV of 1869). 171 Section 11, The Divorce Act (IV of 1869).
172 12 Lahore 266.
* This has been raised to Rs. 100 by the amending Act of 1922.

in the decree directing which of the losing parties should bear the fees and in what proportion or the court may direct that the same should be borne by the estate and come out of it as generally happens in scheme suits and suits relating to trusts.

CHAPTER XXXIII.—CANCELLATION OF DECREES AND DOCUMENTS.

132. Section 7, clause (iv) (*a*) of the Court-Fees Act as amended in Madras prescribes the fee to be collected in respect of suits for the *cancellation* of a decree or document. Presumably this can apply only to suits by persons who are parties to the decree or document. Otherwise the word "cancellation" will be inappropriate. In such cases it is but proper that the subject-matter both for the levy of court-fees and for the determination of jurisdiction should be the amount or the value of the property for which the decree was passed or the document was executed. Of course in cases where the documents need not be set aside as for instance where the execution is denied, it has been held that no question of setting aside the document arises as the alleged executant is not a "party" at all, at least so far as plaint allegations go.[172] (*a*)

133. In cases where the party is not *sui juris* or is under disability and the document is executed on his behalf by any guardian, then too for the purposes of the cancellation of the document, the person under disability, though not an actual executant thereof is a party as he has been properly represented. In a decision of our court, of course the view was taken that a minor *need not sue for the cancellation* of any instrument which was executed in his name by a guardian.[172] (*b*) But this view was not approved in later decisions.[172](*c*) There is one other decision [172] (*d*) where a guardian who purported to act for a minor was found to have a conflict of interest with the minor, it was held he cannot be deemed to have acted properly and that the minor whom he represented cannot be deemed to be a party. It is submitted that it cannot be ascertained when an aggrieved minor *institutes the suit*, whether between him and the guardian there was any conflict of interest. It is to be decided later on and it happens in almost every case where a minor questions the authority of his guardian to execute the document on his behalf or to represent him in a suit, he has a grievance against the guardian and the allegation usually made is that the guardian was actuated by motives not beneficial to the minor. Therefore, in the fixation of court-fee, it will be impossible to undertake an ascertainment of the *bona fides* of a guardian at the stage the suit is instituted. Whether the guardian acted *bona fide* or *mala fide*, within or outside his powers and rightly or wrongly, if he did act for a person under a disability, the latter when he institutes a suit cannot but, for the purposes of the section, be deemed a party seeking to set aside or cancel a document or decree. Of course, this cannot apply to a case where a person who is not a guardian at all and has no authority whatsoever to represent the minor purports to execute a document or represent a person under a disability on behalf of such disabled person. The minor cannot be deemed in any sense a party to the document or decree. Therefore the approved view is that where a minor or other person under a disability has been represented by a person who has an *apparent* right to act for him, then the minor or the person under disability must be deemed to be a party to the document and must sue to set it aside. Whatever that may be, it is certainly not the province of the Court-Fees Act or the Suits Valuation Act to lay down the law as to who all should be "deemed to be parties" and bound to sue for a cancellation of an instrument or decree. Its province is simply to fix the fee to be levied if and when a suit for such "cancellation" is instituted.

134. "There are suits of another kind well known in this part of the country where the plaintiff seeks not the cancellation of the decree but a declaration or an injunction to protect his interest in property being proceeded against in execution of a decree obtained not against him *eo nominee* but against another person who under the personal law fills a special position such as a Manager of a Tarwad or of a joint Hindu family or a Hindu father. A similar situation may arise when any person interested in trust property sues for a declaration that a decree for money obtained against a trustee should not be executed against trust property. In all these cases the decree will be left intact against the defendant to the original action, but the rights of the plaintiff in that action will be considered." The Suits Valuation Rules Committee held that this class of suits required "a special provision and they are in substance analogous to claims whereby third parties seek to protect their property from being proceeded against in execution of decrees obtained against their vendor or mortgagor "[173] and recommended a rule similar to that mentioned in section 7, clause (viii) of the Court-Fees Act.

[172] (*a*) 68 M.L.J. 95.

[172] (*b*) 1928 A.I.R. Mad. 816.

[172] (*c*) 1929 A.I.R. Mad. 668; (1938) M.W.N. 825.

[172] (*d*) 71 M.L.J., 383.

[173] Suits Valuation Rules Committees' Report, paragraph 10.

135. A person who files a claim petition when his property is attached in execution of a decree and fails, can file a suit *to set aside the attachment*. This bears a fixed fee as a suit to set aside a summary order. He may not file a claim petition at all but may sue for a declaration that the property belongs to him. Then it is a declaratory suit for which a fixed fee is leviable that is also to some extent dependent on the value of the subject-matter. Else he may pray for a declaration regarding his title to the property and for a consequent relief—an injunction and so forth. Then he can value the suit as he chooses under section 7, clause (iv) (*c*). This is again subject to the proviso in Madras that the value should not be less than half the value of the property. Then there is the suit to set aside attachment under section 7, clause (viii). There the suit has to be valued at the entire subject-matter but subject to this proviso, that where the decree amount for which the property is attached is less than the value of the property the lesser value is to be taken as the value of the suit. Of course to prevent these diverse kinds of action, it has been held that the suit is to be valued under section 7, clause (viii). [173] (*a*) But as has been already recommended, the whole difficulty can be solved by abolishing the distinction in the value of a suit, whether it follows in the wake of a claim petition or not, and assimilating it with a suit for declaration. Such suits are in essence only suits for declaration. The Suits Valuation Rules Committee is of the view that the class of suits set out in the preceding paragraph is not sufficiently taxed, as such suits are now filed as declaratory suits and pay a small fixed court-fee. Hence they recommend that a special provision on the lines of section 7, clause (viii), may be enacted. But in view of the recommendation regarding the levy of *ad valorem* fee in declaratory suits, there is no necessity now to frame any new rule as suggested by the Suits Valuation Rules Committee.

Provision must be made that where a party to a document or a decree files a suit either to set aside the decree or cancel the instrument, he must pay court-fee *ad valorem*[174] on the value of the subject-matter which must be the amount or the value of the property covered by the document or decree. In the case of other persons, it will be only a declaratory suit.

136. Where the document or decree is not to be set aside in its entirety but only as regards a part thereof, the value shall be such part of the amount or value of the property according to the present provision. While retaining this, a further provision should be made to the effect that where a decree or document, the liability under which cannot be split up is sought to be set aside as regards a particular item of property belonging to plaintiff or as regards the plaintiff's share of a joint property, the value of the subject-matter of the suit shall be the value of such property or share or the decree amount whichever is less, on the analogy of valuation of a suit to set aside attachment and an appeal where exoneration of property from mortgage liability is sought.

In this connexion it is submitted that the wording of section 7, clause (iv-A) has given rise to some trouble. The words "securing money" in section 7, clause (iv-A) are not quite happy and lead to a deal of doubt and confusion as regards the intention of the Legislature[174](*a*). The difficulty can be got over by adopting the phraseology in the

[173] (*a*) The unreported decision of the Madras High Court in S.A. No. 235 of 1927.

[174] Of course the value of the property under the section must be computed at its market value and not according to the artificial method prescribed for a suit for recovery of possession under the present Act. Even with regard to the latter, the recommendation made is that market value must determine the court-fee and jurisdiction. If, however, the Legislature is not for accepting the recommendation in the case of a suit for recovery of possession, the question has to be considered whether that artificial mode of valuation should be adopted for suits for cancellation also. Under the present law, there has been a marked conflict of judicial decisions as to the intention of the Legislature on the point. The position is that in a suit to set aside a decree, court-fee is assessed on the *statutory value* of the property forming the subject-matter of the suit, while in a suit to cancel a document, court-fee is assessed on the *market value* of the property forming the subject-matter of the suit. The principle of valuation is the same both for suits for cancellation of decrees and suits for cancellation of documents but different rules are followed because of the conflict of decisions mentioned above. It was first held in 50 M.L.J. 506 that the word 'value' in the clause should be taken as the market value. But this was dissented from later in a Bench decision in 53 M.L.J. 267 where the word 'value' was held to mean the statutory value under clause (v). This decision was commented on in Mr. Satyamurti Ayyar's Court-Fees Act (pages 114 and 115 of the Third Edition). But the correctness of it was taken for granted in the Bench decision in 56 Mad. 212, where however the question was, as pointed out at page 115 of the book, not whether the value was to be taken as the statutory value or the market value but whether it was full statutory value or one half of it under section 7, clause (iv) (*e*), proviso. Anyway, these two latter decisions related to suits for cancellation of decrees and the question coming up once again before a single Judge in a more recent case reported in 59 Mad. 240 with regard to a suit for cancellation of a document, Venkatasubba Rao J. disagreed with the previous decisions and held that the market value must be taken, observing that as the previous decisions related to decrees, he was not bound by them. This decision has been followed very recently by Wadsworth J. in S.A. No. 318 of 1936 decided on 26th July 1938 (48 L.W. 277), with regard to a suit to set aside document. But in a still more recent decision by King and Stodart JJ. in S.A. No. 592 of 1932, dated 4th August 1938, the decision of Venkatasubba Rao in 59 Mad. 240 is not at all referred to and the two earlier decisions in 53 M.L.J. 267 and 56 Mad. 212 have been followed even with regards to suit for cancellation of documents The result is that there is great uncertainty in the present state of authorities as regards the valuation of suits for cancellation of documents or decrees relating to land. This must be ended by enacting that value in relation to immovable property shall mean market value.

Note.—Since the above was written, the matter has been set at rest by a recent decision of a Full Bench, of our High Court in (1939) 1 M.L.J. 702 which has laid down that the word "value" in section 7, clause (iv-A) means market value.

[174] (*a*) Per Venkataramana Rao J. in C.R.P. No. 1241 of 1936, dated 21st March 1938, reported in 1938 M.W.N. 520.

Indian Registration Act[175] for it is clear the word " secure " has been used to create a charge by virtue of the instrument and not used in the loose sense as " creating evidence or positive proof." There is a clear distinction in law where a document evidences a prior transaction and where any right is created or extinguished by the document itself. It is necessary to make this clear in drafting the rule.

137. Suits to set aside an award corresponds to a suit to set aside a decree and instead of such cases being put on a distinct category and fixed fees being levied under Schedule II, Article 17-A (2), as at present, they may be treated as suits to set aside decrees for the levy of court-fee.

Chapter XXXIV.—Plurality of Reliefs and Causes of Action.

138. Under the Code of Civil Procedure, all persons may be joined in one suit as plaintiffs or defendants in whom or against whom any right to relief arising out of the same act or transaction or series of acts or transactions is alleged to exist whether jointly or severally or in the alternative, when if such persons brought separate suits or separate suits were brought against them as the case may be, any common question of law or fact would arise[176]. In addition to such joinder of persons, there may be several causes of action which are combined in one suit and several reliefs prayed for arising from same or there may be a single cause of action and more than one relief prayed for. Again, they may be prayed for cumulatively or alternatively. The levy of fees in such cases is a never-ending source of controversy in courts. Broadly speaking, it can be laid down that where more than one relief is sought each having a distinct value and an entity by itself, each of those reliefs should be valued separately and the fee collected should be on the total value of such reliefs but where the reliefs are not sought cumulatively but alternatively, then, it is clear, that the plaintiff should be liable to pay court-fee only on that relief which is chargeable to the higher court-fee. But the difficulty comes in where there are more than one cause of action. The levy of fees at present is regulated by section 17 of the Court-Fees Act which sets out that where a suit embraces two or more distinct " subjects ", the plaint shall be charged with the aggregate amount of the fees with which the plaints would be chargeable under the Act, if separate suits were instituted in respect of each of such subjects. There was a great uncertainty in construing the word " subject." There is no definition in the Court-Fees Act and " subject " was generally construed to mean " cause of action." It was also construed to mean " reliefs " or " things " but the accepted view is that it means " cause of action." In the Bengal Act VII of 1935, section 17 was amended by using the words " cause of action " instead of the word " subject."

139. The recommendations regarding the regulation of fees in suits where there is plurality of causes of action may be summarized thus :

(1) Where different reliefs arise out of a single cause of action, the reliefs should be valued separately and the fee collected on the aggregate value.

(2) Where a single relief is sought under different causes of action, the question arises whether they should be separately charged. It would be, if in section 17 of the Court-Fees Act, the words " cause of action " are substituted for the word " subject." It is true that each cause of action might form the subject-matter of a separate suit. But where the relief sought is the same, though the basis of the claim is different, it is but proper and equitable to collect only a single fee as there is only one relief sought by the plaintiff however much he might have broadened the basis of his claim by resting it on several causes of action[177].

(3) Where a suit comprises two or more separate and distinct causes of action and separate or distinct reliefs are sought in respect of each, the plaint shall be chargeable with the aggregate amount of the fees with which the plaints would be chargeable if separate suits were instituted in respect of each such cause of action. This is in accordance with the amendment in Bengal. But this will be a hardship in cases where a plaintiff is compelled by statute[178] to sue on more than one cause of action, lest he be precluded from suing on it later. Where a person holds several mortgages in respect of the same property against the same mortgagor, then, even though each gives rise to a distinct cause of action, the statute obliges the plaintiff to sue on all the mortgages if the amounts payable have fallen due under the documents[179]. In such a case, it will be hard to treat each case as a separate suit, computing the fee payable in each suit as if it were a separate suit and then collect the total court-fee[180]. Therefore, a proviso should be added to the effect that where it is obligatory to institute a single suit in respect of different causes of action, the fees shall be calculated on the aggregate value of the reliefs which should be construed for court-fees as accruing from a single cause of action.

(4) Where alternative reliefs are sought in respect of the same cause of action, the relief which has the largest monetary value should alone be held liable for court-fee. When one of such reliefs is subject to a fixed fee and the other to an *ad valorem* fee, the larger of the two fees will be the fee payable in the suit[181].

(5) Where there is a plurality of causes of action and in respect of same, alternative reliefs are prayed for, the question arises whether the larger of the two alternative reliefs or both should be charged. A decision of our court lays down[182] that a cumulative fee should be charged. But this may be hard in cases where the alternative reliefs are claimed against the same person and arise out of the same transaction. When the position is conceded that where a relief is sought alternatively in a suit based on a single cause of action, only one such relief having the largest value is charged, it is only an extension of the principle to provide for a single fee, where the plaintiff prays for the grant of only one of the reliefs against the defendant though based on different causes of action. It is therefore suggested that a proviso should be added that where the causes of action arise out of the same transaction and the relief is prayed for against the same person, the fee that is collected might be akin to the fee that is leviable in the case of a single cause of action giving rise to alternative reliefs. This is in accordance with the decision of our court in a recent case[183] where there were two reliefs claimed in the suit one to set aside an alienation, and in the alternative if the alienation is found to be binding, for recovery of money. Obviously the first claim is on the footing of the invalidity of the document and the second relief is based on the validity of the document. It was held relying on an earlier decision[184] that the test adopted in ascertaining whether two or more claims constitute different subjects within the meaning of section 17 of the Court-Fees Act, viz., whether different suits might have been instituted in respect thereof is not a decisive one and that they were not distinct subjects. In passing, it may be noted that in the Bengal Act, section 17, clause (2) is obviously incorrect as it provides that where more reliefs than one based on the same cause of action are sought *either jointly or in the alternative*, the fee shall be paid according to the value of the relief in respect of which the largest fee is payable. In such a case, it must be a fee on the aggregate and not only on one of the reliefs sought.

In cases of reliefs for recovery of possession of immovable property and for mesne profits, court-fee is now charged only on the aggregate and not separately even though they are based on distinct causes of action. This is the view taken in a Full Bench decision of our court[185] which itself is based on the long practice with regard to such suits. If the phraseology in section 17 is changed by the substitution of the words " causes of action " for " distinct subject ", then it would result in the reliefs based on the distinct causes of action being charged separately which is against the present practice. The maintenance of the present practice is only possible if an explanation is added to the effect that in such cases the relief shall be deemed to be based on the same cause of action in respect of these classes of suits.

A recommendation has been made elsewhere that there should be a single scale of court-fee in all money suits whether they are of a small cause nature or not. If that is not accepted, then special provision should be made in cases of cumulative reliefs that the court-fee charged should be only on the higher scale in suits consisting of distinct subjects where the aggregate claim exceeds Rs. 500, even though the several claims or most of them may be below Rs. 500 and of a small cause nature. The position is different under the present law and it could not be otherwise in view of the language of the present section 17 of the Act.[186] At present, the plaintiffs combine different claims of a small

[175] Section 17 of the Indian Registration Act makes registration compulsory where the instrument purports or operates to create, declare, assign, limit or extinguish whether in present or in future, any right, title or interest whether vested or contingent in any property movable or immovable.

[176] Order 2, rules 1 and 3, Civil Procedure Code.

[177] Please see the observations in 30 Mad. 61. The decision to the contrary in A.I.R. 1931 Mad. 533 stands alone and it is submitted cannot be justified even under the present law.

[178] Order 2, rule 2, Civil Procedure Code, explanation.

[179] Section 69-A of the Transfer of Property Act.

[180] But this was what was laid down in the decision in 68 M.L.J. 316 according to which the principle of consolidation applied by section 67-A, Transfer of Property Act, has no bearing on the interpretation of section 17 of the Court-Fees Act.

[181] This is in accordance with the decision of our High Court in 67 M.L.J. 151.

[182] 30 Mad. 61.

[183] (1938) 1 M.L.J. 139.

[184] 54 Mad. 1.

[185] 54 Mad. 1.

[186] 65 M.L.J. 252.

cause nature and have the advantage of a regular trial, an appeal and a second appeal, paying court-fee on the small cause scale. This defect should be rectified. But the necessity will arise only in case the recommendation that has been made elsewhere that there should be a homogenous scale of fee in all money suits is not accepted.

140. *Appeals.*—There is some doubt as to whether the principle enunciated in rule 3 supra can be followed in an appeal by a defendant where a decree is passed in favour of the plaintiff based on different causes of action, which will be for a consolidated sum in a money suit. Should the appellant value the different items making up the amount *decreed against him as are referable to the different causes of action separately?* Logically, that should be done. One fails to see why there should be a different method of valuation adopted when the appeal is by the plaintiff or by the defendant.

Chapter XXXV.—Set-off and Counter-claim pleaded in Written Statement.

141. At present written statements containing set-off or counter-claim are chargeable just as a plaint in any other money suit under Schedule I, article I. There is no distinction as to court-fees under the present Act between legal set-off and equitable set off.[187] An equitable set off pleaded in a written statement must bear the appropriate court-fee, as there is nothing to show that the set off mentioned in article I, Schedule I of the Act, is confined only to a legal set off, coming under Order 8, rule 6 of the Code of Civil Procedure. An equitable set-off arises where there are different demands arising out of the same transaction or so connected in their nature and circumstances that they can be looked upon as part of the same transaction.[188] Even where the amount of set off is less than the plaint claim, court-fee is chargeable on it.[189] It therefore follows that where it is in excess of the plaint claim, court-fee is payable on the entire amount and not merely on the excess.[190] But the contrary view is also expressed.[191] In this connexion, it may be pointed out that it was doubted[192] whether a counter-claim for which there is no provision in the Code can be sustained in the mufassal Courts. But there is no definite authority against the entertainment of such counter-claims and the fact that the words relating to set-off and counter-claim were inserted in Schedule I, article I of the Court-Fees Act by the Code itself in 1908 conclusively shows that the Legislature did contemplate the entertainment of counter-claims by the mufassal courts even at the time of enacting the Civil Procedure Code. The provision was made simply to avoid the filing of a separate suit by the defendant for his claim and seeking to set off the decree obtained therein against the decree obtained by the plaintiff in the former suit against him. Perhaps it was considered that special provision for counter-claim was unnecessary in the Code. Written statements pleading an equitable set off need not be charged to court-fee, unless a counter-decree is prayed for, in which case, court-fee should be payable only on the excess amount claimed by the defendant after adjusting the amount claimed in the plaint.

Chapter XXXVI.—Reference under the Land Acquisition Act.

142. At present, there is no provision for the levy of any court-fee in references made by Land Acquisition Officers either *suo motu* under section 30 of the Land Acquisition Act or on the application of a party under section 18 of the Act. The expediency of levying a fee in such cases was considered by the Suits Valuation Rules Committee and though they expressed the view it may be expedient to levy a fee on such references so far as they relate to rival claims to title, they did not pursue the matter further as it was outside the scope of the reference under section 9 of the Suits Valuation Act. Where a reference is made by a Public Officer seeking the assistance of the court, it is but proper that no fee should be charged for same. Similar provision for reference is found in section 113 of the Code of Civil Procedure, the Stamp Act and the Income-Tax Act. No fees are charged on such references in those cases. It would make no difference whether the reference is made by the officer *suo motu* or at the instance of a party, as in either case, a reference is necessitated only because there is some dispute regarding the compensation amount or its apportionment or title to the amount. Merely because, there could be no fee levied on the reference, it does not mean that after the court adjudges the matter, the party who has failed wholly or partially in his claim should not be liable to pay a fee commensurate with the value of the subject-matter at issue. This controversy might arise between rival claimants regarding the apportionment of the amount or the title to the entire amount or it might arise between the Crown and the person entitled to the compensation amount regarding the adequacy thereof. Either way, there is a live issue relative to property of value and when there is an adjudication, it is but proper that the party whose claims have been negatived either wholly or in part should bear the burden of the cost of the adjudication. The reference by the Collector is something akin to a suit in an interpleader action. The Collector brings it to the notice of the court the existence of a dispute between the Crown and the claimant or between the several claimants. Therefore in cases between the Crown and the claimant, where the losing party is directed to pay costs to the successful party, there is no reason why the losing party should not also be directed to pay court-fee to Government. Where the amount of compensation awarded by the Collector is varied on reference, the Crown and the litigant will, agreeably to the findings of Court, pay the court-fees proportionate to the extent the amount is either enhanced or reduced. In the case of rival claimants to the amount or to the apportionment thereof, similar rules will apply and the unsuccessful party will be liable to pay court-fee to Government proportionate to the value of the claim made by him which was not substantiated. In the latter class of cases, where the issue is not about the quantum of compensation but relative to the title of the property and its apportionment, court-fee will be leviable at half the usual *ad valorem* rate as in a declaratory suit. In all these cases, where court-fee has to be paid, the Court can either direct an unsuccessful party to pay the court-fee direct to Government or collect it from the successful party by retrenching it from the compensation amount available in Court and add the court-fee so retrenched to the costs that may be awarded to the successful party.

[187] A.I.R. (1933) Mad. 203; 58 M. 338. [188] A.I.R. (1937) Lah. 73. [189] 15 M. 29.
[190] 45 All. 218; A.I.R. (1935) Pat. 110; A.I.R. (1936) Nag. 222.
[191] A.I.R. (1927) Nag. 74; 38 Bom. 631; A.I.R. (1937) Lah. 73.
[192] A.I.R. (1933) Mad. 353.

Chapter XXXVII.—Certain Proceedings in Insolvency.

143. A cursory examination of judicial statistics will indicate the rapid increase of insolvency proceedings year after year. This may be due to general economic depression and the inability of debtors to liquidate their liabilities. There are cases, however, where litigants do not stop short of exploiting the situation. Many a secured creditor has chosen the easy method of adjudging his debtor an insolvent and giving his consent to the Official Receiver to sell the property free of encumbrances, in order to realize the mortgage money. Though it is the policy of the law to facilitate as much as possible the administration of an insolvent's estate, yet, it appears that a fetish is made of the interests of the creditors for whose benefit every effort is said to be made to conserve to the last pie the assets of the insolvent. While the cost of administration of civil justice should be met solely from the judicial fees collected, the cost of insolvency administration has to be borne by the general litigant and obviously where more judicial time is spent in dealing with insolvency matters, the heavier becomes the burden of the general litigant. It may well be considered whether any proceedings in insolvency which at present escape with a light fee or no fee should not be made liable to court-fee and thereby contribute their quota of court-fee revenue. An instance in point is a petition under section 26 of the Provincial Insolvency Act where on the dismissal of a creditor's petition in adjudging his debtor an insolvent, the debtor can file a petition for damages and might get a compensation in a sum of not less than Rs. 1,000. This is analogous to section 95 of the Civil Procedure Code for damages for wrongful attachment or arrest. Following the provision adopted there, it is proper to collect half the *ad valorem* fee in such cases for the amount of compensation that is sought. Another class of petitions are applications by the Official Receiver for setting aside fraudulent alienations of property under section 53 of the Provincial Insolvency Act or "fraudulent preferences" under section 54. There are applications under section 50 of the Act as well for an enquiry about the truth or otherwise of debts disclosed in the schedule and the correctness of the amount shown therein. In all these cases, the insolvent and the creditor or the alienee are in *pari delicto* and whatever may be the expediency of permitting the Official Receiver to agitate these matters by taking out appropriate applications without payment of a court-fee commensurate with the value of the subject-matter involved, there is absolutely no justification, why, where the alienation or the credit that is sought to be sustained by the alienee or the creditor is found to be false or fraudulent, they should not, like any party in an ordinary suit, be made liable for the costs of the adjudication. As in pauper cases, it may be open to the Court where these applications by the Official Receivers are allowed either wholly or in part, to direct the defeated party to pay the *ad valorem* fee as in declaratory suits. But if court-fees are directed to be paid by the Official Receiver as it may well be, at least in cases where alienations are set aside and there is an accretion to the insolvent's estate, the said amount

may be decreed to the Official Receiver as costs to be realized from the unsuccessful party. Or copies of such orders where the unsuccessful respondents in such applications are directed to pay costs may be sent to the revenue authorities as in pauper cases for the collection of court-fee due as a public demand.

143-A. In the note appended to the Suits Valuation Rules Committee's Report, it is observed that "the levy of any court-fee with regard to matters which are investigated under sections 53 and 54 of the Provincial Insolvency Act, may not be expedient *as no particular creditor* gets the benefit of the litigation." It is submitted that the question may not depend on whether it is a single creditor or a body of creditors that get the benefit and insolvencies are not unknown where there is a single creditor. Another reason advanced is that "an insolvency implies that a creditor loses a large portion of his money and more often he gets a very insignificant portion of his debt and the imposition of a heavy court-fee will deter the Official Receiver from taking the necessary proceedings in the interests of the creditors." But the above recommendation is not to mulct the insolvent's estate with the payment of the fee but to realize it only in case the applications of the Official Receiver are successful and the collection is to be made from the defeated party. If the applicant succeeds, the insolvent's estate stands to gain. If he loses, Courts do not stop short of directing the Official Receiver to pay the costs of the successful respondent. The benefit to the creditors does not stand in the way of courts compensating a person against whom an unsuccessful and consequently an unnecessary application has been taken out by the Official Receiver. Though before filing these applications, the Official Receiver usually takes care, where he is instructed by a creditor to institute such proceedings, that he is indemnified against any loss to the estate in the shape of costs that he may be directed to pay to the respondent in case the applications fail, still considering the policy of the law exempting applications by Official Receivers from the payment of court-fee, the Government can well forego the fee in cases where such applications fail as is done in pauper suits which are dismissed and the pauper plaintiffs are unable to pay the court-fee. But these considerations do not apply to and cannot stand in the way of, the collection of fees for the adjudication of these claims from a defeated creditor or alienee. Further, such a levy is also necessary as a deterrent measure to minimise those cases where insolvents screen the property by making benami transfers and entering into sham transactions with a view to defeat and defraud their creditors. The liability to pay the court-fee by such defeated alienees will operate as a salutory check on such fraudulent transactions.

144. The above considerations may not exactly apply to cases of appeals. Even though these applications result in orders and the appeals thereon are filed as civil miscellaneous appeals, these comprise a class of cases where a higher court-fee than on a petition, i.e., of Rs. 2 should be collected. It is quite clear that where the Official Receiver's application succeeds and a fraudulent alienation or preference is set aside and the defeated party appeals, he should be made to value the appeal and pay court-fee as in an ordinary case. Even where the appeal is by the Official Receiver it is submitted that the appellant should pay court-fees on the memorandum of appeal. An appeal is quite different from original proceedings. The Official Receiver is an officer of court. Lest the administration be impeded and the Official Receiver prevented from taking the steps in the interests of the estate for want of funds he is exempted from the payment of fees and is permitted to move the court to set aside a fraudulent preference or a fraudulent alienation by means of an application. Once he invokes the jurisdiction of the court, the matter is gone into and the court comes to the conclusion that the application is unsustainable and ought to be dismissed, it is for consideration whether the indulgence shown to the Official Receiver in the court of first instance, should be extended to appeals as well. Once there is an adjudication against the Official Receiver, and he elects to appeal, it is submitted he will have to pay court-fees on the appeal in the ordinary scale as in any other suit. In all these matters, if court-fee is collected, it will be computed as if the relief prayed in these applications or appeals are prayed for in a regular suit.

Chapter XXXVIII.—Suits incapable of Valuation and not otherwise provided for.

145. Once the principle is accepted that the fees levied ought to have some relationship to the intrinsic value of the subject-matter in the suit, it naturally follows that the fees are to be computed on an *ad valorem* basis. That necessarily implies the valuation of the relief sought. Still there must obviously be cases where the subject-matter do not lend themselves to such an assessment. In such suits, the reliefs have to be valued only for jurisdictional purposes, for there are pecuniary limits to the jurisdiction of some courts.

This class of suits is now charged to fixed fee under article 17-B of Schedule II. Specific recommendations are made in this report regarding some suits which now fall under this article, e.g., partition suits, matrimonial suits, suits for reduction of maintenance, etc. There may be other suits which come under the category for which it is neither possible nor desirable to prescribe a special mode of valuation. The reliefs claimed in those suits have necessarily to be treated as incapable of valuation for court-fees, though jurisdiction may be regulated by the value of the properties, if any, involved in the suit.[193] In such cases, where there are means of fixing the value for purpose of jurisdiction, the forum is not a matter of plaintiff's choice. In other cases where there are no such means, the plaintiff has the choice. In either case instead of the fee being determined by the valuation of the suit, being below or above Rs. 3,000 it may be expedient to fix another stage and levy a higher fee in suits of value exceeding Rs. 5,000, as these suits may be taken up to the High Court in first appeal. A fee of Rs. 200 is recommended in such cases.

146. The jurisdiction of the Madras City Civil Court having been recently raised to Rs. 5,000 the suits which are incapable of valuation for court-fee purposes but which are valued for jurisdiction at the value of the properties, if any, in relation to which the relief is sought in the suit, would escape with a fee of Rs. 15 even where such value is more than Rs. 3,000. Such suits arising in the mufassal have to be instituted in a Subordinate Judge's Court on a fee of Rs. 100. This was apparently overlooked when the jurisdiction of the City Civil Court was raised. It is therefore desirable to fix a fee of Rs. 100 in such cases instituted in the City Civil Court, where the value for jurisdiction exceeds Rs. 3,000.

147. The language of the article has given rise to an anomaly in the case of second appeals instituted in District Munsif's and revenue courts.* Though the suits are originally instituted in those Courts, the decrees against which the second appeals are filed are from a Subordinate Judge's Court or a District Court and were consequently liable to a fee of Rs. 100. This was thought to be really hard and the article was apparently not intended to apply to such cases. When it was brought to the notice of Government, the fees were reduced to Rs. 15 and since then, they are *raised* to Rs. 25 under the powers vested in Government by Section 35 of the Act. It is desirable to put this in a statutory basis instead of the fee being fixed at Rs. 100 and left to fluctuate according to, and be regulated by the periodical notifications of Government.

147-A. There is a conflict of views regarding the levy of fees in suits for possession or joint possession of trust properties between trustees or between a plaintiff who claims to be a trustee and a defendant who is alleged to have ceased to be a trustee. This topic is dealt with in the Report of the Suits Valuation Rules Committee.† The Committee observes that there is a certain amount of conflict of opinion in the existing case law in respect of such suits, due mainly to the emphasis to be laid on the consideration that in such suits the plaintiff does not assert any *beneficial* interest in the property. There can however be no doubt that in such suits the plaintiff is asserting his *personal* right. It was therefore suggested that "in all such cases where the suit is one for possession of immovable property the valuation and the court-fee shall be one-third or half of what it would be if it related to a claim in respect of private property." But in the note appended to the report it was doubted whether a rule could be enacted as recommended, for the reason that such suits cannot be said to be incapable of valuation. It was therefore recommended that as the plaintiff may not have a beneficial interest in the properties, a fixed fee as is now provided for suits under section 92 of the Civil Procedure Code will meet such cases. It is submitted that though the plaintiff does not seek any personal benefit, still the post of a trustee is looked upon as a valuable right and is one that is coveted as conferring honour and dignity. But this does not justify the fee to be fixed in proportion to the value of the trust property. The present scale of a fixed fee as in suits under section 92, Civil Procedure Code, will meet the requirements of the case. Where the value of the trust property is small and the *ad valorem* fee happens to be less than the fixed fee as above recommended, the lesser of the two fees may be levied.

SECTION B.—APPLICATIONS AND PETITIONS.

Chapter XXXIX.—General.

148. The applications set out in Schedule II, article 1 are so cumbrous that it is desirable to classify them under two main heads :—those made to courts and those made to public servants, or public officers other than courts. These matters are dealt with in the Indian

[193] 31 Mad. 89.

* See Mr. Satyamurti Ayyar's Court-Fees Act, p. 592.

† Paragraph 11.

Taxation Committee's Report[194] as miscellaneous fees payable to revenue and other officers. They observe that the original provisions regarding these fees were widely worded and produced quite a considerable revenue but in later years they have been qualified by so many exceptions or exemptions that it is probable that the revenue derived from them is very small. They recommend that a distinction should be made between applications that involve enquiries of a judicial character and applications for relief from or recovery of taxation and applications which are incidental to ordinary official routine. They recommend that an examination should be made of the applications before revenue and other officers and that they should be either enhanced in proper cases or remitted. Such an enquiry has not been undertaken and no data is available. Therefore only a broad distinction can possibly be made between applications to courts and applications to public servants or officials. In the latter case, a flat rate of As. 2 for every application may be collected and in the former case the present rate of As. 12 might continue, subject to the modification suggested in the cases of certain special kinds of applications.

At present it will be startling to find that heavy matters as petitions under the Companies Act are deemed ordinary petitions filed in the form of notices of motion and liable to a small fee even when presented to the High Court. It seems therefore expedient to differentiate between different kinds of applications and modulate the fees according to the nature, complexity and importance thereof.

Chapter XL.—Certain kinds of Applications and Petitions.

149. *Application for winding up a company.*—In the United Provinces a fee of Rs. 50 is levied on such applications. In the Punjab a fixed fee of Rs. 100 is levied on same. It is submitted that a similar fee may also be levied here.

150. *Application under section 95 of the Code of Civil Procedure.*—Another desirable reform is with reference to applications under section 95 of the Code. Where an arrest or attachment before judgment has been effected and a temporary injunction obtained and it appears to the court that such arrest, attachment or injunction was applied for on insufficient grounds, or the suit fails, and it appears to the court that there was no reasonable or probable ground for instituting same, the defendant may apply to the court and the court may on such application award against the plaintiff by its order such amount not exceeding Rs. 1,000 as it deems reasonable as compensation to the defendant for the expense or injury caused to him. An order in such applications bars any later suit for compensation. No doubt, the object which justified the grant of such a summary remedy will be defeated if an *ad valorem* fee as in a suit for damages is collected on such applications as recommended by the Indian Taxation Enquiry Committee.[195] But there is also no denying the fact that such an enquiry precludes the institution of any further suit and there is also an appeal provided against such orders. Consequently there is no justification for differentiating a trial in a suit for damages and an application of this kind except that the claim cannot exceed Rs. 1,000 in these summary proceedings. Still, if a party chooses to invoke the aid of the court for this summary adjudication, it cannot justifiably be asserted that the claim could be agitated as in a simple petition with a payment of a court-fee of As. 12. Considering all the circumstances, it appears that it will be just and proper to levy an *ad valorem* fee for the amount of compensation claimed. But in view of the fact that it is a summary proceeding, a moiety may be waived and one half collected. (Cf. Schedule I, article 3, relating to suits under section 9 of the Specific Relief Act and Schedule I, article 4, relating to applications for review, which prescribe a moiety of the normal fee).

151. *Applications for arrest or attachment before judgment or for temporary injunction.*—The Indian Taxation Enquiry Committee observes[196] that these applications are put in by parties for the purpose of obtaining an indirect advantage over their opponents and the orders passed on them are appealable. They observe further that the fee is only As. 8 (under the Main Act) as against five shillings in England which considering the level of court-fees there is comparatively high. Many a fight is won or lost by the success or failure in these skirmishes and anybody who has got the practical experience of the conduct of judicial work in the mufassal will readily subscribe to the proposition that applications of this kind are often used as a powerful lever to bring down the opposite party to terms. I refer to these only to show that these applications are out of the common rut of general applications in civil courts and it may not be any hardship to tax them a little more heavily

[194] Paragraph 348. [195] Paragraph 343 (4). [196] Paragraph 343 (2).

than they are at present. I suggest a fee of As. 12 as the proper fee on such applications in suits of the value of less than Rs. 50 and a fee of Rs. 2 on such applications in other suits. The fee may be fixed as Rs. 4 on such applications filed in the High Court.

152. *Applications under section 47 and applications under Order XXI, rr. 58 and 90 of the Code of Civil Procedure.*—Though applications under section 47 are treated as applications in execution these are practically suits. Evidence is taken as in a suit and the order passed is appealable as a decree. This application can if the court chooses be also converted into a suit. These applications could therefore well be charged at a higher rate, viz., As. 12 when filed in the District Munsif's Court, the City Civil Court, and Revenue Court and Rs. 2 when filed in the Court of Subordinate Judge or District Court. In the case of applications under Order XXI, r. 58, a higher fee may be levied where the value of the subject-matter is over Rs. 5,000.

153. *Application to set aside* ex parte *decree, etc.*—Some recommendations have been made by the Indian Taxation Committee[197] that applications to set aside decrees passed *ex parte* and for review of orders dismissing a suit for default carry a low fee which may be increased. This recommendation hardly commends itself for there is nothing which marks these applications as comparatively heavy or of greater moment than other applications. Anybody conversant with mufassal practice will readily agree that applications of this kind are mainly due to the want of insistence on personal service. Where a process-server chooses to report not only that the defendant is absent but also adds the unfortunately "mamool" statement that he is evading service or where on a similar statement from the plaintiff for substituted service, personal service is not insisted on and decrees are passed, it usually results in applications to set aside these *ex parte* decrees. It will be rather hard to enhance the fee on such applications. Similar remarks apply to restoration of suits dismissed for default. When a court sets aside the order of dismissal for default it is tantamount to holding that the dismissal was not justified and therefore such petitioner cannot be mulcted with a higher fee.

154. *Application for compensation under section 26 of the Provincial Insolvency Act.*—Section 26 of the Provincial Insolvency Act provides that where a court is satisfied that a petition is frivolous or vexatious, it may, on the application of the judgment-debtor, award to such creditor as reasonable compensation a sum not exceeding Rs. 1,000. This provision is analogous to the provision contained in section 95 of the Code of Civil Procedure. This application should also be treated as an application under section 95, Civil Procedure Code, for the purpose of levy of court-fee. Though the application is filed in an insolvency proceeding, the application is not one by the insolvent but against a creditor and therefore there is no justification for any fee being excused.[198]

155. *Proceedings under the Madras Hindu Religious Endowments Act.*—The scale of fees leviable on proceedings under the Act are set out in Schedule II thereto. In the case of applications to modify or cancel an order of the Board or Committee granting or refusing sanction for alienation of trust property, and to modify or set aside a decision of the Board as to whether an institution is a mutt or temple it is provided that the fee should be levied under Schedule II, article 17 of the Court-Fees Madras Amendment Act, 1922. The question arose whether the reference to the article of the Court-Fees Act applicable, is to article 17 (1) or article 17-A (1). It was held article 17 (1) was meant.[199] The result is that these applications are put on a par with *suits* to set aside summary decisions. The fee now recommended for such suits are rather too heavy for these applications. It is therefore recommended that a fixed fee of Rs. 15 may be levied on such applications and the necessary amendment may be made to the scale of fees set out in Schedule II of the Hindu Religious Endowments Act.

156. *Applications under the Estates Land Act and the Malabar Tenants Compensation Act.*—These are dealt with under the heading of "Landlord and Tenant" in Chapter XXX.

157. *Applications under the Indian Trusts Act.*—It is recommended by the Indian Taxation Enquiry Committee that applications under sections 34, 72, 73 and 74 of the Indian Trusts Act for opinion or advice or for discharge from a trust or for appointment of a new trustee take a considerable time in courts and on the principle of payment for service rendered, should pay a higher fee than what is now levied which is As. 12 in Madras. The recommendation seems to be unexceptionable and a fee of Rs. 5 may be quite legitimate in such cases.[200] It is clear that it is impossible to devise an accurate estimate of the value of such applications and a fixed fee is inevitable. Heavier fee cannot be fixed for such applications as it is the duty of the State to see that trusts are properly administered. At the same time, while it may not be advisable to discourage such applications by trustees, who in the majority of cases discharge their duties without any remuneration, it is hardly

[197] Paragraph 343 (5). [198] See also Chapter XXXVIII of the Report *supra*. [199] 53 Mad. 266.

[200] (Cf. article 18 in the Central Provinces introduced by article XVI of 1935 charging Rs. 10 on such applications).

fair that Court's time should be taken up for giving advice in the administration of private estates without the estates bearing some portion of the necessary charges for the advice or directions by which they are benefited.

158. *Election petitions.*—There is no denying the fact that election petitions come under the category of what are called "luxury litigation" and cost an appreciable sum to the State and contribute practically nothing towards it. It is no doubt the primary concern of the State to ensure the purity of elections and the return of suitable candidates to the Local Bodies. At the same time, it cannot be denied that very often, election petitions are the result of personal or communal rivalry and actuated by malice or spite. When these petitions come to court, they are often fought out with great animus, the trial is protracted and costs a good sum to the contending parties. It is but proper to levy an amount which bears some relation to the cost of the service rendered.[201] That these petitions ought to be taxed is an unexceptionable proposition. In United Provinces, by Act VII of 1933, a fee of Rs. 100 is levied on petitions questioning the election of any member of a district board or a municipality. (Vide article 22 of the U.P. Act). In Bengal, a petition questioning the election of any municipal commissioner or a member of a district board is chargeable to a fee of Rs. 15 under Act VII of 1935.

It is therefore recommended that a fee of Rs. 50 or any amount Government might consider proper may be levied. In this connexion it is also for consideration whether adequate court-fee may not be levied on election petition filed with reference to elections to the various legislative bodies, which necessitate the constitution of a special tribunal and a judicial enquiry.

159. *Applications for probate.*—The Suits Valuation Rules Committee held that they cannot deal with applications for probate without legislation. In the note of Mr. Justice Venkataramana Rao, it is observed out that "As pointed out in 21 M.L.J. 481, the only title which is litigated in a suit consequent on the filing of a caveat in a testamentary matter is the right to administer the estate and if the administrator is to sue to recover the estate, he will have to pay the court-fees on its value". Therefore it was recommended that on principle, *ad valorem* court-fee should not be levied in such cases. It was no doubt conceded that in certain suits where, e.g., the genuineness of the will is disputed, considerable time is taken in the investigation of the several questions of fact and law involved in the case and it was recommended a fixed fee as in a declaratory suit may be levied. But according to the recommendations made in this report regarding declaratory suits the fee levied is a moiety of the *ad valorem* fee leviable on the intrinsic value of the property with reference to which the adjudication is sought.

160. The next question is the procedure to be adopted in the collection of the fee. Where a petitioner applies for probate, it may be, the matter is uncontested and consequently there is no justification for the levy of any substantial fee when the petition is filed. It is therefore recommended that a court-fee of Rs. 5 may be levied on the application unless the value of the estate is below Rs. 1,000 in which case the fee may be fixed at As. 12. Where a caveat is filed and the petition is registered as a testamentary suit and under the provisions of the Indian Succession Act, the petition is treated as a plaint and the caveat as a written statement and the trial is directed to partake of the nature of a suit, then, there is no getting away from the fact that for all purposes, this is a suit pure and simple. In that case, the propounder of the will may be taken to be a plaintiff who seeks a declaration regarding the testament with or without consequential relief. Therefore, the fee leviable in such classes of suits is also the fee that should be levied in this case. Once a caveat is entered, the petitioner should be called upon to pay the necessary fee and time given. Of course the initial payment of Rs. 5 that he makes on the petition should be given credit to. The procedure which will apply in the case of any other suit regarding the collection of court-fee and the consequence of non-compliance within the time granted by court will thereafter apply to these testamentary suits as well.

161. *Civil revision petitions.*—The fees on civil revision petitions filed under section 115, Civil Procedure Code, have been enhanced from Rs. 2 to Rs. 5 and Rs. 10. The Indian Taxation Enquiry Committee[202] pointed out that there was a net loss on each civil revision petition of Rs. 30 to the Crown. When the fees on such petitions were enhanced, it was only the fees as regards petitions under section 115 of the Code of Civil Procedure. But there are several other revision petitions as for instance under section 25 of the Provincial Small Causes Courts Act and section 75 of the Provincial Insolvency Act. In respect of these a fee of only Rs. 2 is now collected. Whatever may be the policy as regards revision petitions in small cause suits, there is no justification for this lower fee for revision petitions

[201] See paragraph 344 of the Indian Taxation Committee Report. [202] Paragraph 343 (1).

arising in insolvency cases, wherein fairly big claims are litigated and the proceedings are protracted. It therefore seems advisable to have a general provision providing a flat rate of Rs. 5 in cases where the revision petition arises in a suit or proceeding of the value of Rs. 1,000 and under, and Rs. 10 where it exceeds Rs. 1,000.

In the case of revision petitions in small cause suits under the Provincial Small Cause Courts Act, the suits are below Rs. 1,000 for that is the highest limit of small cause jurisdiction in the mufassal. Therefore it may be stated irrespective of the value that a revision petition under section 25 of the Provincial Small Cause Courts Act may be charged to court-fee at a flat rate of Rs. 5.

162. *Original petition.*—An original petition is defined in the Civil Rules of Practice as a petition whereby any proceeding other than a suit or appeal or a proceeding in execution of a decree or order is instituted in a court. These as contrasted with interlocutory applications are independent proceedings and are generally of greater complexity and importance than the former. They comprise petitions under the Guardian and Wards Act, the Lunacy Act, the Arbitration Act, the Transfer of Property Act, etc. The trial of these petitions sometimes take as much time as suits and the value of subject-matter is usually high. It is therefore recommended that a uniform fee of Rs. 5 in a District Munsif's Court and City Civil Court and Rs. 10 in sub-court and district court may be levied.

163. *Writs of mandamus and certiorari.*—These applications filed in the High Court are complicated and usually absorb a deal of judicial time. A fee of Rs. 20 may well be levied in such cases.

CHAPTER XLI.—REVIEW APPLICATIONS.

164. The fees payable on applications for review of judgment are regulated by articles 4 and 5, Schedule I of the Court-Fees Act. The same fee as was payable in the suit or proceeding, the decree in which is sought to be reviewed, is payable if the application for review is filed ninety days and later, from the date of the decree. But if it is filed before the ninetieth day only half such fee is leviable. These articles lead to some curious results. Articles 161, 162 and 175 of the Indian Limitation Act prescribe a period of 15, 20 and 90 days for review of small cause decrees, decrees passed by the Original Side of the High Court, and by other courts, respectively. In spite of these varying periods the deciding factor, whether half or the full fee is leviable, depends on whether the petition was filed before the ninetieth day or later. While in the case of applications governed by article 175 of the Limitation Act if the application is filed on the ninetieth day the full fee is payable though the application is within the period of limitation fixed for filing such applications, in the case of similar review petitions falling under article 161 filed long after the expiry of the period fixed, viz., 15 days, the concession of the payment of a half-fee is granted. Of course the Court-Fees Act is not applicable in its entirety to the Original Side of the High Court and the anomaly arising in cases under article 162 of the Limitation Act need not therefore be considered. If an application is in time if filed within ninety days of the date of passing of the decree sought to be reviewed, why should a petitioner filing his petition on the ninetieth day be required to pay the full-fee paid in the suit while he is given a concession of half the fee if he filed it 24 hours in advance, i.e., on the eighty-ninth day? What is this supreme importance of the ninetieth day as a decisive factor? Again, section 14 of the Court-Fees Act provided that even if the petition is filed on or after the ninetieth day and the court finds the delay was not due to petitioner's laches it can order a refund of a moiety of the fee paid. This is again a meaningless formality as observed by the Judges of the Calcutta High Court.[203] There a review application was filed on the ninetieth day when the eighty-ninth day happened to be a Sunday. Under section 4 of the Indian Limitation Act, if an act has to be performed on a day which happens to be holiday, it could be done on the next working day and it would be deemed to have been performed in time. But Schedule I, article 4 of the Court-Fees Act is so peremptory as to render this provision in the Limitation Act inapplicable so that even in such a case the petitioner has to pay the full fee. But the Judges took a common sense view of the matter and holding that the collection of the full fee and the refund of half of it immediately under section 14 is an idle formality directed the collection of only half the fee. Of course under the Act as it stands, the correctness of the decision—it is submitted—may well be doubted. But, it clearly demonstrates the absurdity of the situation, that courts are driven to the necessity of giving effect to a common sense view though it may not be a strictly legal one. What is the principle underlying the levy of two different amounts as fees in the case of a

[203] A.I.R. 1924 Cal. 994.

review petition which is filed within the period fixed? What is again the principle of denying the concession to a petition filed on the ninetieth day irrespective of the fact whether it is filed in time under article 175 or out of time under article 161 of the Indian Limitation Act? There appears to be no logical justification for these provisions. Again in cases where review petitions are filed out of time, a petition to excuse delay has to be filed under section 5 of the Limitation Act. If that petition is allowed, there is a condonation of the delay and the petition will be considered to have been filed in time. *If the delay is not excused*, then it is recommended elsewhere that the fee has to be refunded as the court declines to take the proceeding on its file. If the *delay is condoned*, then under section 14 of the Court-Fees Act, one-half the fee has to be refunded. Thus if the review petition is filed in time (barring this meaningless difference between the eighty-ninth and ninetieth day) then the fee leviable is half the regular fee. If it is filed later and the delay is excused then there has to be the refund of a half. Consequently there is no case in which full fee will have to be collected and *retained*. It is therefore recommended that half the regular fee may be collected in all review applications.

165. In those rare cases where there is a change in the amount of fee leviable between the date of the institution of the suit or proceeding and the date of the review petition there was a conflict of views[204] as to whether the fee should be levied according to the scale of fees that was in force at the time of the initiation of the proceedings or as it was altered later. The better view seems to be that taken by the Madras High Court, viz., the computation should be on the basis of the fees leviable on the suit or proceeding if it were filed on the date of the review application. It is recommended that the provision may be simplified by enacting that the fee on review applications will be half the fee payable in the suit if filed on the date of the review application.

166. It is again a vexed question whether the fee payable is half the entire fee levied on the suit or proceeding even in cases where there is a *review of a part*. Cases are not uncommon where that portion of a decree relating to costs alone is sought to be reviewed. There is a sharp difference of opinion whether the fee should be calculated on the entire subject-matter[205] in the suit or on the value of the subject-matter in the review petition.[206] It was held that hardship will be caused by the adoption of the former view but the remedy was considered to be "only by an amendment of the law."[207] Hence it is recommended that a fee commensurate with the value of the subject-matter of the review petition alone need be collected and this value may be computed in the same manner as in the suit or appeal in which it is filed.

PART IV.—APPEALS.

CHAPTER XLII.—GENERAL.

167. Under the present Act, there has been a good deal of trouble about the principles of valuation to be applicable to appeals. First of all it was doubted whether the word "suit" in section 7 includes also appeals, so that the special mode of valuation provided therein would be applicable also to valuation of appeals. The expression "Memorandum of appeal" is mentioned only in section 7, clause (iv) of the Act. This does not mean that the other provisions are not applicable to appeals. The proper construction of the Act would be to take the word "suit" as including appeal also.[208] But still some practical difficulty would be felt in construing the section taking the word "suit" as including appeals. For instance how is it possible to read "suit *for* money" in section 7, clause 1, as including an appeal *against* a decree *for* money? This is the reason why the Madras High Court has held that the word "suit" in section 7 does not include "appeals" but that the principles applicable for valuation of appeals for assessing court-fee payable under Schedule I, article I, shall be the same as those applicable to suits.[209] It is on this principle that appeals are being valued at in all cases. It is best to give legislative recognition to this principle without defining that "suit" shall include "appeal." The reference to "a memorandum of appeal" also in section 7, clause (iv) (*f*), which has given rise to difficulty in the case of appeals in suits for accounts would then become unnecessary, and may be deleted. This would also avoid the difficulty caused by a strict interpretation of the words "plaint or

[204] 50 Mad. 488; 4 Bom. 26; A.I.R. 1924 Cal. 881; 31 All. 294; 54 All. 1092; A.I.R. 1924 Oudh 108; 86 I.C. 143 (Pat.).

[205] This is the view of the Calcutta, Allahabad, Nagpur and Lahore High Courts—57 C. 679; 31 A. 294; 1933 Nag. 207; 20 I.C. 3 (Lah.)

[206] This is the view of the Madras, Bombay and Rangoon High Courts—50 Mad. 488; 4 B. 26, 11 R. 120.

[207] Per Aikman J. in 31 A. 294.

[208] Vide Satyamurti Ayyar's Court-Fees Act, p. 137; A.I.R. 1934 A. 807 at p. 808; 25 O.C. 30; Observations of Horwill J. in 71 M.L.J. 677 at p. 684.

[209] 48 Mad. 652; cf. also 20 M.L.J. 121; A.I.R. 1928 Mad. 929.

memorandum of appeal in a declaratory suit."[210] The position as regards appeals in account suits is discussed under "account suits" in paragraph 104 of the Report.

168. Special provision may be made to obviate the need of including future interest and future mesne profits accruing subsequent to decree in the case of defendant's appeals against decrees granting such future interest or mesne profits. It is sometimes said that the advocate cannot at the time when he is first consulted be in a position to exactly assess the court-fee because he cannot be sure of the date when the appeal will be actually presented by him. Besides, there may be delay on the part of the office in drafting the decree or preparing the copy, which should not result in increasing the fee for appeal. The question has been already dealt with when dealing with future mesne profits in appeals.

169. Again there may be a general provision that in all cases where the subject-matter of the appeal is not co-extensive with the subject-matter of the suit, the subject-matter of appeal shall as far as may be possible, be valued on the same basis as the suit. Where as in suits for accounts such valuation can only be tentative, the court must have powers to direct the valuation to be revised suitably if it is satisfied that the valuation given by the appellant in the first instance has not been *bona fide*.

170. In a mortgage suit filed either by a mortgagee for sale, or foreclosure, etc., or by a mortgagor for redemption, the appeal may be filed by either of the parties and the question may relate only to the mortgage right or right of redemption in a particular item of property. It may be desirable to make a provision for valuation of such appeals at the value of the particular item of property forming the subject-matter of appeal if such value is less than the mortgage amount on the analogy of the proviso to section 7, clause (viii) of the Act. This principle has been recognized by courts in the case of appeals in mortgage suits for sale in 10 Mad. 187; 30 Mad., 96 F.B.; A.I.R. 1931 Mad. 710 though the older decision in 16 Mad. 326 seems to have enunciated a contrary principle regarding an appeal in a redemption suit.

CHAPTER XLIII.—APPEALS AGAINST FINAL DECREES.

171. A preliminary decree and a final decree are passed in several kinds of suits, as suits for accounts, suits for dissolution of partnership, suits for partition, etc. In such cases, under the Code of Civil Procedure unless an appeal is preferred against a preliminary decree, the correctness thereof cannot be questioned in an appeal against the final decree.[211] Consequently, any person aggrieved by a preliminary decree should file an appeal against it and if he has a grievance against the final decree as well, he must appeal against that also. Thus, though in the suit there is only one valuation and one proceeding, the existence of two decrees necessitates two different proceedings in appeal. It is but equitable that no party should be detrimentally affected by following the procedure prescribed by the Code. Consequently, courts give the appellant appealing from the final decree credit for the court-fee already paid by him in an appeal against the preliminary decree. But this can be done only when the appeal against the preliminary decree is pending. It has been decided by our High Court[212] that this concession of getting credit for the court-fees paid on appeal from the preliminary decree is available where the appeal against the *final* decree is filed *when his previous appeal against the preliminary decree is pending*. There does not seem to be any justification for making the levy of fee in an appeal from the final decree dependent on the contingency of the appeal against the preliminary decree being pending at that time. Credit is usually sought by an appellant against a final decree only in cases relating to mortgages, accounts and dissolution of partnership. In all these cases, the main relief prayed for by the plaintiff is to get a decree for specific amounts. As a matter of convenience, it is provided in the Code of Civil Procedure, that the trial of the suit might be in two stages, there being an ascertainment of the obligation to account or pay in the first stage and the ascertainment of the exact amount payable or determination of the method of realization (in mortgage suits) of the amount decreed in the second stage. It is also settled law that where the plaintiff files such a suit and values his claim either definitely or tentatively, that value is binding[213] on the defendant who might appeal against a preliminary decree that may be passed in the suit. Consequently, whether an appellant against a preliminary decree succeeds or fails either wholly or in part and a final decree is necessitated and an appeal is again filed on the final decree, it is but reasonable and just that the two stages of the trial should be taken as the trial of a single suit and a person who has figured as an appellant both against the preliminary decree and the final decree should not be liable to pay court-fee on the same amount on both the occasions. This is forcibly brought out in a suit on a

[210] Vide discussion in Satyamurti Ayyar's Court-Fees Act, p. 575, 576.

[211] Section 97, Civil Procedure Code.

[212] 55 Mad. 664.

[213] (1938) 1 M.L.J. 628 (F.B.).

simple mortgage. The plaintiff comes to court for recovering a specific amount as payable by the defendant and the preliminary decree itself directs that the defendant do pay the said sum. Again, a final decree is passed simply directing the sale of the hypotheca as the first step in the realization of the decree amount. Then, on an application for passing a personal decree, if it subsists, the court investigates that question and passes a personal decree for the balance due. The cumulative effect of all these decrees is only to secure that specific sum of money for which the plaintiff has sued. Merely because, in the course of the trial of the single suit, three decrees come to be passed, it is unreasonable to tax the defendant who might be fighting the plaintiff's case stage after stage, three times for the same or lesser amounts. There may also be cases where before a final decree is passed, the defendant makes an allegation that he has paid off the mortgage amount under the preliminary decree. That would not affect the matter even though that is a new question that is decided between the date of the preliminary decree and the final decree. Though preliminary and final decrees are passed also in partition actions, for division of joint properties between co-tenants, the question of credit being given in appeal against a final decree of fees paid on preliminary decrees does not arise for the reason that the principle of valuation in partition suits is quite different from the rest of the suits in which such dual decrees are passed.

CHAPTER XLIV.—APPEALS AGAINST ORDERS.

172. Schedule II, article 11 of the Act prescribes a fee of Re. 1 for all appeals against orders presented to any civil court other than a High Court, or to any revenue court or executive officer other than a High Court or chief controlling executive authority and a fee of Rs. 2 for such appeals presented to a High Court or chief controlling executive or revenue authority. For several applications or petitions which are of a special nature, special fees are recommended. Appeals from orders passed on such applications should be chargeable to the same fee as is prescribed for the said applications. The present fee of Re. 1 may be continued for other appeals in the Subordinate Courts. But in the case of civil miscellaneous appeals presented to the High Court, the fee of Rs. 2 is ridiculously low and this has been enhanced to Rs. 5 in Bengal. As in the case of civil revision petitions, it is recommended that the fee fixed may be Rs. 5 where the amount or value of the subject-matter of the appeal does not exceed Rs. 1,000 and Rs. 10 in other cases.

173. Civil miscellaneous appeals filed against orders awarding compensation under section 95 of the Code or section 26 of the Provincial Insolvency Act may be charged to *ad valorem* court-fee at the full *ad valorem* scale on the amount in dispute in appeal, there being no need to extend to appeals the concession of charging at a half scale suggested for those original proceedings in the Court of first instance.

174. Appeals provided for in section 104 (*b*), (*c*), (*d*) and (*f*) of the Code relating to arbitration awards either in pending proceedings or arbitration out of court may be charged to a court-fee of Rs. 15 or Rs. 100 according as they arise from the order of the District Munsif's Court or a superior Court on the analogy of Schedule II, articles 18 and 19 because they relate to matters of controversy substantially affecting the rights of the parties and finally disposed of by the lower Courts.

175. An appeal provided for in section 104 (*ff*), C.P.C., against an order for prohibitory costs under section 35-A (if that section is made applicable to the Madras Presidency be Government notification), * may be made chargeable to *ad valorem* court-fee calculated on the amount in dispute in appeal, as otherwise it will be chargeable only as any other appeal against an order.

CHAPTER XLV.—APPEALS IN PROCEEDINGS UNDER THE SUCCESSION ACT.

175-A. There are orders and orders. Certain orders partake mainly of the nature of decrees both as regards the importance of the subject-matter and the procedure adopted in the suits. Appeals against such orders have to be considered separately. Proceedings under the Indian Succession Act are of this type. Section 295 of the Indian Succession Act of 1925 which combines section 261 of the Act of 1865 and section 83 of the Act of 1881 provides: " that in any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code of Civil Procedure, 1908, in which the petitioner for probate or letters of administration as the case may be, shall be the plaintiff and the person who has appeared to oppose the grant shall be the defendant." Consequently as regards contested testamentary suits it has been recommended that court-fee should be charged on an *ad valorem* basis at half scale as in declaratory suits.

* It is recommended that this section may be notified to apply to the Presidency of Madras.

It follows therefore that appeals against decrees passed in such suits should be charged to court-fee on the same basis. Even under the present law, they would be charged to fees as in declaratory suits, though there is some conflict of decisions on the point. Again section 299 (made up of section 263 of the Act of 1865 and section 86 of the Act of 1891) provides that every " order " of the District Judge shall be subject to appeal " in accordance with the provisions of the Code of Civil Procedure applicable to appeals." This provision signifies that the order would be appealable only if it is appealable according to the Code. i.e., if it is a decree within the meaning of section 2 (2) of the Code and therefore appealable under section 96 of the Code or if it is one of the appealable orders mentioned in section 104.[214] Though the decision of the District Judge granting or dismissing an application for probate is mentioned as an order in the section, it is really a decree within the meaning of section 2, Civil Procedure Code and is appealable as such. Otherwise it would not at all be appealable as it is not one of the appealable orders mentioned in section 104, Civil Procedure Code. The view was advanced in an Allahabad case [215] that as the decision of the District Judge is termed an *order* and that order is not one of the appealable orders mentioned in section 104, Civil Procedure Code, no appeal lay; but it was held that it was appealable as a decree, the application for probate being a suit by virtue of section 295 of the Act and the order having conclusively determined the right claimed so far as the District Judge's Court is concerned. The decisions as to court-fees payable in such appeals have not been uniform. The earliest case in Madras (an unreported one) is Appeal No. 94 of 1900 where it was held by Justices Benson and Bhashyam Ayyangar that the order of the District Judge under the Probate and Administration Act had *the force of a decree* and that therefore Schedule II, article 11, was inapplicable and that the appeal should be stamped *ad valorem* as per Schedule I, article 1. This was followed by another unreported decision of which Justice Bhashyam Ayyangar was also a member, Appeal No. 194 of 1900. The same bench decided on the same date in Civil Miscellaneous Appeal No. 125 of 1900 that an appeal under section 19 of the *Indian Succession Act* (now section 384 of the Indian Succession Act of 1925) is only an appeal against an order. The reason advanced is that proceedings for probate and letters of administration are suits by virtue of the statutory provision of section 295 of the Succession Act, while there is no such provision as regards proceedings for succession certificates either in the old Act or in the present Act. But there was again a change in the view [216] and it was held that an appeal in a testamentary suit must be deemed to be only an appeal against an order. The reason given is that the decree or order gives only a title to the petitioner to administer the estate, that if he sues to recover the estate, he may have to pay stamp duty on its value and that stamp duty on the value of the estate should not be levied twice. The Allahabad High Court took a quite opposite view [217] and held that the appeal must be deemed to be an appeal against a decree but that court-fee should be paid under Schedule II, article 17 (item VI) of the Act as if the subject matter is incapable of valuation.

176. It is submitted that there is no force in the view expressed in 21 M.L.J. 481 that if the appeal is charged to court-fee it would amount to taxing the estate twice. The court-fee levied is for the adjudication of the disputed claim. Let us take this instance. A petition is filed for probating a will. There is a caveat. The petition is registered as a contested testamentary suit and court-fee is levied. The only question is about the execution of the will. Probate is granted. Then duty is payable. Again the executor is not able to get the property. He sues for possession. Then the adjudication is about the testamentary capacity of the testator. That a court-fee is leviable in such a suit is no answer to the levy of probate duty. Similarly that probate duty is leviable is no answer for the levy of court-fee in contested testamentary suits or appeals. It is on this footing that recommendation has been made in this report for the levy of a fee in contested testamentary suits as in declaratory suits. Appeals arising from such suits must also be similarly taxed.

PART V.—FEES OF THE NATURE OF DUTIES.

CHAPTER XLVI.—GENERAL.

177. The nature of court-fee has been examined in the earlier chapters in this report, and the view was expressed that in certain cases the court-fee that is collected cannot be stated to represent the value of services rendered but partake of the nature of a duty or tax as well. Even in common parlance fees collected on probates or succession certificates issued by courts are spoken of as " duties." In a matter that came up to the Calcutta High

[214] 21 Cal. 539 at p. 540.
[215] 17 All. 475 and 8 C.W.N. 748.
[216] (1911) 21 M.L.J. 481.
[217] 35 All. 448.

Court, this question was incidentally dealt with. Their Lordships [218] held that the "sum charged upon a grant of probate or letters of administration *is not a tax or duty* levied on the property" upon which the probate or administration operates and it is not charged thereon as an estate duty in England but is merely a fee levied by the court for work done in issuing the probate. In another decision[219] the view was taken that while succession duty in England is a duty on the value of the succession, probate duty in India is a duty on the value of the properties in respect of which the grant is made. But in either case, the duty is a duty on the value of the grant secured by or conferred on the applicant. Though this probate duty is construed to be court-fees and included in the Court-Fees Act and though it is judicially held to be not a tax as death duties in England, still it must be conceded that there is a deal of difference between court-fees pure and simple which is collected by courts for judicial work done and the duty collected on probates issued by courts. A separate fee is levied on the probate petition. If a caveat is lodged, it becomes a contested testamentary suit. Then if probate is issued a distinct duty called the probate fee is collected which has nothing to do with the time and labour involved for the judicial work done in connexion therewith, but is calculated on the value of the subject-matter covered by the probate. This is somewhat akin to the collection of stamp duty for engrossing partition decrees, where court-fee is already collected for the adjudication of the shares of the sharers and partition of the properties by metes and bounds. Probate duty was construed to be a pure taxation in the report of the Indian Taxation Enquiry Committee[220] where they observe that "the duties levied under the Court-Fees Act on probates, letters of administration, succession certificates . . . though levied in the form of court-fees partake to some extent of the nature of the death duties of other countries." They go so far as to recommend further that the fees levied under the Court-Fees Act which constitute pure taxation unconnected with any suit such as duties on probates should not be credited as receipt of Courts at all.[221]

CHAPTER XLVII.—PROBATE AND LETTERS OF ADMINISTRATION.

178. Petitions for issue of probate and letters of administration and testamentary suits have already been considered. If in those proceedings, the issue of probates or letters of administration is ordered, specific rules have to be framed for the levy of the duty on such documents and the procedure to be adopted for the ascertainment of the correct amount and collection thereof. These are found in sections 19-A to 19-K of the Court-Fees Act. Of them, section 19-A to 19-G were inserted by section 6 of the Probate and Administration Act (XIII of 1875) while sections 19-H to 19-K were inserted later by the Court-Fees Amendment Act (XI of 1899).

179. The Indian Taxation Enquiry Committee observe [222] that in their incidence the tax on probates, etc., was inequitable as it does not apply to all communities. But this cannot be remedied by amendments to the Court-Fees Act, for, the scope of the Court-Fees Act is only to provide for a proper incidence of fee on all probate matters and the Legislature cannot by any section of the Court-Fees Act make its provisions applicable to persons to whom under the substantive law, i.e., the Succession Act they are inapplicable. The larger question of a tax on succession irrespective of the personal law of a person is not within the ambit of a Court-Fees Act. Therefore, the discussion that follows relate only to cases where an *application* for probate or letters of administration *comes before the Court.*

180. The sections, as they stand at present, are not quite satisfactory. To some extent, they overlap, perhaps due to the fact that they have been introduced into the Court-Fees Act in instalments. In some cases, there is a lacuna in the sections and certain provisions are quite anomalous. It is expedient that these should be rectified and Chapter III-A of the Act recast. That these sections are not satisfactory has been recognized by the Central Legislature when it brought out a Bill in 1924, which never went beyond the stage of the Draft Bill. In that Bill, the whole chapter of the Court-Fees Act dealing with this subject was scrapped and a new draft was put up. But a far-reaching change was sought to be introduced by postponing the issue of probate till the Collector holds the investigation about the value of the estate and reports to the court about the correctness or otherwise of the valuation given by the applicant. Then, the applicant has got the opportunity to show cause why the Collector's valuation should not be accepted. Under the present Act, the Collector is given a period of six months to make the enquiry. If the new principle is adopted, either the time given to the revenue authorities to make the investigation should be drastically curtailed or

[218] 50 Cal. 597.
[219] 62 Indian Cases 513.
[220] Paragraph 360.
[221] Paragraph 335.
[222] Paragraph 367.

probate petitions should be kept pending for a comparatively long period. But it is the general policy that the grant of probate and letters of administration shall not be delayed. (Vide section 19-I, paragraph 2.) There, it is provided that even where the Collector reports about an undervaluation, the court should not on that account defer the issue of probate. This is quite contrary to the principle of the Bill that pending such a report from the Collector, the court should be under the necessity of staying its hands. The suggested new procedure was not unanimously approved, as will be evident from the dissenting minutes of the members of the Select Committee.

It therefore appears proper that the present practice of the courts accepting the valuation of the petitioner regarding the assets at their face value leaving it to the Collector to make his investigation and if necessary refer the matter to court for an adjudication, should be maintained. The provisions of Chapter III-A can well be grouped under three heads—(1) those relating to cases of overestimate when the applicant seeks the remedy for a refund of excess fee paid by inadvertence or mistake. (2) Cases where there is an undervaluation either of the items already set out in the annexures to the petition or by the omission of any item of asset. This may be detected either by the Collector or by the applicant himself. Procedure is prescribed for the collection of deficit duty in such cases. (3) Cases where the Collector disagrees with the petitioner regarding the valuation of the assets, etc.

181. Regarding the *first* class of cases, the relevant sections are 19-A and 19-B. In section 19-A, it is provided that if the petitioner has paid a higher fee than what is required he should apply to the revenue authorities and they may order a refund. There is no provision for the procedure to be adopted if refund is improperly refused. While on the one hand where a lower fee is paid there is provision for the revenue authorities taking steps for collection of the deficiency and the imposition of even a penalty, where an excess fee has been levied, the question of refund is left to the discretion of the revenue authorities and an aggrieved party cannot compel the Collector to refund. This is another instance where the Court-Fees Act grants only an one-sided protection. It is equitable that the applicant also should have protection by the matter being brought to court. The same remarks apply to the case referred to in section 19-B.

Sections 19-*E*, 19-*G and* 19-*J* apply to cases, where a deficit fee has been paid. Section 19-G refers to cases where the party himself detects that due to a mistake he has under-estimated the value of the estate or paid duty ignoring an item. If he does not make an application within a certain period and pay the deficit, he is to pay a fine of Rs. 1,000 and also 10 per cent of the deficit. Curiously there is nothing in the section about the collection of "deficit fee" at all.

Section 19-*E* refers to cases where the petitioner has underestimated the value of the assets. The words "proved to be of less value" have been construed by the Calcutta High Court[223] as referring to cases where it has been found by the court to be under-estimated, that is *after* a Collector disputes the valuation and makes a reference to court and the court gives a finding. But this construction creates other difficulties. Section 19-E starts with a reference to an application for probate or letters of administration. Presumably, it is the first application by the petitioner. The proviso states "that if the application be made, etc." and that must obviously refer to an application to the Collector. When the words, "the application" are used in the proviso, it must only refer to the preceding application in the main section. But the preceding application is one to the court. Therefore section 19-E can only be understood as stating that in case the party himself applies within six months for the rectification of any mistake made by him, the revenue authorities can, in proper cases, condone the delay. This is a proviso to the general provision under which in other cases the Collector according to the details set out in the body of the section is to collect a multiple fee as penalty. That the construction put by the Calcutta High Court[224] on section 19-E is not the correct one is also evident from a reference to the provisions of section 19-J setting out the method of collection. That section does not refer to the duty and penalty to be paid under section 19-E but refers only to the collection of the *excess* found to be payable on an enquiry held under section 19-H, sub-section (6), which does not involve any penalty such as is referred to in section 19-E. Therefore, it could not be, as has been construed by the Calcutta High Court that the penalty under section 19-E is *consequent* on an enquiry under section 19-H. Again in section 19-J, while the Collector can remit the entire excess penalty levied under section 19-G he can remit only a part of the penalty under section 19-E. Why in a case under section 19-E, the Collector's rights should be curtailed or hedged in, is not clear. Further, there is no provision for the postponement of collection of duty. In many a case, it is the executor or a third

[223] 43 Cal. 230.
[224] 43 Cal. 230.

party that applies for probate. The provision is imperative that along with the application, the entire duty payable on the full value of the estate should be paid. An executor may not have the funds to pay. The payment of probate duty is a charge on the estate. The applicant for probate has to get it out of the estate for which probate is applied for, and he cannot administer the estate and get the necessary funds unless he is clothed with the authority by the grant of probate or letters of administration. Therefore, courts are now put to the necessity of appointing the applicant as interim administrator permitting him to administer the estate, for the limited purpose of raising the necessary funds for paying the duty. All these could be avoided by introducing a provision to the effect that in proper cases the court could suspend the provision regarding payment of duty along with the application with appropriate safeguards as to security, etc., and issue the probate. This will also obviate the necessity of applications for issue of a probate in *forma pauperis*.

182. Where probate or letters of administration is applied for in respect of the share of a deceased member of a Mitakshara joint family, exemption is claimed under Annexure B, Schedule III of the Act, for the value of the property on the ground that the undivided share of the deceased is property held by him in trust. The Calcutta High Court took the view[225] that the deceased must be deemed to have held the property as a trustee for the other coparceners and therefore the estate was not liable to duty. In Bombay, the decisions have not been uniform. In one case[226] it was held that duty was not payable and in another[227] it was held that it was payable but in a later case[228] the earlier view in 29 Bombay 161 was upheld by a Full Bench. The Patna and Allahabad High Courts[229] have taken a view contrary to the Calcutta view. This view is the same as the view in Madras[230]. The Madras High Court holds after a discussion of the authorities that letters of administration might be unnecessary in cases where an undivided coparcener applied for letters of administration of the estate of the deceased coparcener; still, once it is applied for, there is nothing to exempt the application from being charged to court-fee. This matter is also dealt with by the Indian Taxation Enquiry Committee[231]. There, they refer to the Court-Fees Amendment Bill that was then pending before the Central Legislature wherein there was an explanation to the effect that if a member of the joint Hindu family governed by the Mitakshara law applies for probate or letters of administration in respect of the estate of a deceased member of a joint family, such estate shall not be deemed to be property held in trust (which was to get round the decisions of the Calcutta and the Bombay courts) and the applicant shall pay a fee on the value of the share of the joint family property which the deceased would have received if a partition of the property had been made immediately before his death. In the opinion of the Committee, this provision was based on the principle that there is no objection to levy a duty on property passing by survivorship on the death of a coparcener in just the same way as on property or interest in property passing by inheritance. This might be the germ of a proposal for the levy of a general death duty but what is now formulated in this report is not a suggestion that any such duty should be levied but only the enunciation of the principle that where for reasons best known to himself, a petitioner thinks it necessary to invoke the aid of a court to grant him letters of administration of the estate of a deceased coparcener, there is no reason why he should not, like any other applicant, be liable to pay probate duty. It is no answer to say that he *need not* have applied. There are ever so many instances where law does not make it incumbent on an applicant to start a proceeding for any particular relief but if, for any special reason, a person elects to invoke the aid of the court, then, the fact, that proceedings are unnecessary is not relevant in considering the question whether fee is payable or not. It may not be a matter beyond the pale of controversy whether in view of the fact that the right of survivorship automatically enlarges the right of a surviving coparcener instantaneous on the death of the other coparcener, still after the estate of the other surviving coparceners has become so enlarged, law can visualize the existence of any separate estate *of the deceased coparcener* for the administration of which an application for letters of administration can be entertained. But if such applications are entertained, the necessary consequence follows that the duty leviable in similar cases should also be levied for this.

Further the question can well be asked whom the deceased coparcener was a trustee for? Apparently for the other coparceners. If so, how is it to be reconciled with the right of the deceased coparcener to make any disposition of the family property *inter vivos* as under the Mitakshara law prevailing in Madras, which would obviously amount to a breach of trust? This is the touchstone for testing the correctness of the proposition that

225 23 C. 980.
226 29 B. 161.
227 39 B. 245.
228 48 B. 75.
229 5 P.L.J. 510; 17 Pat. 542; 57 A. 881.
230 33 Mad. 93 (F.B.), A.I.R. (1927) M. 1101.
231 Paragraph 374.

a deceased coparcener was a trustee for anybody. It is very easy to infer that this attempt to clothe the deceased person with the mantle of trusteeship is only to devise a method by which the surviving caparceners when applying for letters of administration can escape the legitimate taxation of a probate fee. But the deceased person was in no way a trustee for the other coparceners who chance to get the property by survivorship. A similar provision is found in the Court Fees Bill of 1924. A provision to that effect may also equally find a place in the new Act.

183. The provision regarding the enquiry by the Collector may be amplified and it might be specifically provided that it partakes of the nature of a judicial enquiry. Then, there is no provision for costs in the case of enquiries by court on a reference by the Collector on a dispute between the Collector and the applicant. That defect should be rectified.

184. There is also another defect in section 19-J. While a penalty is prescribed under section 19-E, there is no *method provided for its collection* while a method is provided for collection of deficit fee and penalty under sections 19-H and 19-G. This seems to be a clear omission though an explanation—which it is submitted is hardly adequate—is attempted by the Calcutta High Court[232]. Their Lordships state that the reason why section 19-J which prescribes the method of recovery of penalty makes no mention of section 19-E is that in a case where the section is properly applicable, the petitioner is entirely in the hands of the chief controlling revenue authority who is at liberty to refuse to stamp the probate till the penalty has been paid. No occasion, it is said, will consequently arise for recovery by a summary process or by a suit of the penalty imposed under section 19-E. Again section 19-E (first paragraph) and section 19-G refer to the same set of circumstances and the procedure to be adopted and the penalty to be levied seem to be different. Further in section 19-E, provision is made for the collection of twenty times the proper court-fee without giving credit even for the court-fee originally paid on the probate or letters of administration. This seems to be a very drastic provision refusing credit even for the original fee paid. Where one refers to the table of fees which varies from 2 to 5 per cent, the maximum fee that may be collected according to the provisions of section 19-E comes to twenty times 5 per cent which is *equal* to the entire value of the property for which probate is applied for and if to this is added the fee that has already been paid by the applicant for which no credit is given, the fee will exceed the value of the estate. Of course I quote an extreme case. It is for consideration whether such drastic penalties are, at all, called for. It is desirable that these provisions relating to probate and administration must be throughly revised, rectifying the several defects that are mentioned above.

185. It is therefore recommended as follows: The applicant should bring into court along with his application details of valuation for determining the value of the assets in duplicate, one of which will be transmitted to the revenue authorities. The present procedure under which the fee should be deposited before the grant of probate will continue. The Collector can investigate the correctness of the value given by the petitioner and hold a judicial enquiry. If he comes to the conclusion that a lower fee has been paid, he can call upon the applicant to make it good. If it is made good, he can certify that the deficit has been made good on the probate that the court might have issued. The court will generally take the valuation of the applicant regarding the assets and leave it to the revenue authorities to investigate the matter. If the applicant does not agree with the Collector's valuation, then the Collector can apply to the court to hold an investigation and ascertain the true value of the property. There may be a provision for the costs of such an enquiry. If as a result of the finding, more fee has to be paid by the applicant, he will be directed to make it good. If he does not, the court might recall and cancel the probate or collect the excess or the revenue authorities will have power to collect the excess as arrears of revenue. Where by inadvertence or mistake, the party has undervalued the property or omitted to include any item, then, he can, within six months from the date of the discovery of the mistake apply to the Collector and offer to pay the deficit fee. If the Collector is satisfied, that it was not a deliberate suppression or misstatement but a bona fide mistake and also agrees that the application was made within six months of the discovery by the applicant, he can collect the deficit court-fee without the levy of any penalty and certify to that effect, on the probate, provided there is no dispute as regards the amount of deficit payable. If the Collector holds that the application was made after six months from date of knowledge or that the original undervaluation or omission was not due to any bona fide mistake, it is open to him in addition to the deficit court-fee payable, to collect a sum not exceeding five times the deficit as penalty. This penalty and the deficit court-fee will be collected as arrears of land revenue. But if the Collector and the applicant do not agree regarding the amount of deficient court-fee due to a disagreement regarding the value, then, the Collector can apply to the court for determining the true valuation and the provisions relating to a

232 43 Cal. 230 at p. 238.

similar application by the Collector on the first grant will also apply to this. On such deficiency being determined the provisions relating to the levy of excess duty and penalty will also apply.

186. Regarding refunds, any party who has, by mistake either in computation or otherwise paid a larger court-fee than he need have paid, can apply to the revenue authorities within six months of the date of the discovery of his mistake for a refund and if the Collector does not issue a refund, then, the party can apply to the court for an order for refund. The other provision, viz., section 19-C relating to cases of serval grants and sections 19-I and K will stand. Section 19-D and section 19-F may be retained.

CHAPTER XLVIII.—SUCCESSION CERTIFICATES.

187. The fee is regulated by the provisions of Schedule I, Article 12 of the Act. Under that, the fee is 2 per cent on the value of the debt for which a certificate is sought and if an extension is sought, the rate is 3 per cent on the amount for which extension is sought. This has been modified by almost every Provincial Legislature and the amendment in Madras with which alone we are now concerned is most unfortunate. The Madras Act provides that where the amount or value of any debt or security specified in the certificate does not exceed Rs. 5,000 the fee payable is 2 per cent. The words " any debt " causes no end of confusion.[233] Suppose the petitioner applies for a certificate in respect of two debts, one for Rs. 4,000 and another for Rs. 6,000, then it may be contended that as one of the debts is below Rs. 5,000 the fee to be collected is only at the rate of 2 per cent on the amount which is below Rs. 5,000. This contention[234] found favour at least with one of our superior courts where it was held that the amount or value of *any* debt or security did not refer to anything except individual debts and individual securities and the amount payable in respect of a succession certificate is to be calculated according to the amounts of the individual items comprised in the application and not according to the total amount of those claims. Consequently, taking the Madras rule, if there are a number of debts in a single application, some of them below Rs. 5,000 and some over Rs. 5,000 the rate of fee applicable to the individual debts must accordingly vary. This construction is not only illogical but also anomalous. For instance, if after getting a certificate, the petitioner applies for extension of certificate for another amount, then, is that extended certificate to be deemed an extension of the original certificate relating to debts below Rs. 5,000 or such of them that exceeded Rs. 5,000 ? This becomes material, as that will determine the rate of fee levied for the extended certificate. Again, there is another anomaly. Let us take the case of a petition for succession certificate for a debt valued at Rs. 1,000 where a fee at the rate of 2 per cent is collected. Suppose the petitioner applies for extension of the certificate for a debt for Rs. 9,000, then the rate is 3 per cent on that amount. Instead of this, if the petitioner had applied for a succession certificate for the Rs. 9,000 debt in the first instance and applied for an extension of the certificate to the Rs. 1,000 debt later, then, the fee would have been under the Madras Act, 3 and 4½ per cent respectively. Let us take another case where a person files a petition for a certificate for a debt of Rs. 1,000. A fee of 2 per cent is collected: if then he files an application for extension of the certificate to a debt of Rs. 4,000 then under the article, he has to pay 3 per cent on that amount. But if he had originally applied for a certificate for both these debts, the fee payable would have been only 2 per cent. This state of the law places a premium on a petitioner manipulating his application and pay as low a fee as possible. It is not easy to understand why a higher rate need be prescribed for extension of certificates. If at all there should be any variation in the fee, it should rather be less than the original fee as any adjudication relative to the right of the claimant is made only when the original petition for the issue of a certificate is made, further extensions being granted as a matter of course

188. It is expedient that these anomalies should be avoided. This could be done if something akin to the slab system of taxation is adopted. At present under the Madras Act, the fee is 2 per cent up to Rs. 5,000 and 3 per cent on extensions of certificates. If the amount of the debt specified in the original certificate exceeds Rs. 5,000, the fee is 3 per cent for the original debt and 4½ per cent for the extension. This can be simplified and put on a more logical basis by keeping the present percentage of fees and by prescribing the levy of a fee of 2 per cent up to Rs. 5,000, 3 per cent between Rs. 5,000 and Rs. 10,000 and 4½ per cent over Rs 10,000. The fee will be levied at 2 per cent up to Rs. 5,000 and at 3 per cent on the

[233] Vide discussion in Mr. Satyamurti Ayyar's Court Fees Act, p. 499.
[234] A.I.R. 1934 (0) 414.

excess amount, if any, up to Rs. 10,000. In cases where it exceeds Rs. 10,000 up to Rs. 10,000 as above calculated and 4½ per cent on the excess. It must be made clear that the aggregate value of the debts or securities in a single petition will be the amount for the computation of the fee irrespective of the value of the individual debts. Regarding extensions of certificates, there should be no option for a petitioner to juggle with the amounts and get any benefit by applying for a certificate for a debt at the outset and getting it extended to particular other debts later on. Where there is an extension of the certificate, the fee to be computed will be on the above basis by totalling the amount for which the certificate is sought to be extended and the amount for which certificate or certificates have already been issued and giving credit to the petitioner for the fee already levied from him in respect of the previous certificate. This scheme was in fact set out in the Court Fee Bill of 1924.

189. It may be noticed in this connection that in the other Provincial amendments—Bengal, Bombay and Central Provinces certificates for amounts below Rs. 1,000 are exempt from fee. This is on the analogy of exemptions in respect of probates. But in Madras, there is no such exemption and it is neither expedient nor necessary. There is a fundamental difference between succession certificates and probates. In the latter the valuation is of the *entire* estate while in applications for grant of succession certificates only a particular debt or debts are disclosed and fee paid thereon. The parties choose only a few of the several items belonging to an estate and get a succession certificate for that. Whatever contest there is, it is also adjudicated upon in the first application and on the strength of it the claimant is able to establish and exercise his right to the entire estate. Therefore there is no case made out for exempting them. Further the cases below Rs. 1,000 in value are so numerous that an exemption of fee will involve a heavy loss of revenue.

CHAPTER XLIX.—VAKALATNAMAHS.

190. While a vakalat is necessary to entitle a pleader to appear in any proceeding, there is a lack of uniformity in the levy of fees thereon. In the mufassal and in the City Civil Court the fee levied as per the Madras Court Fees Act is Re. 1, in the High Court, Appellate Side, it is Rs. 3; in the Presidency Court of Small Causes it is engrossed on non-judicial stamp paper of the denomination of As. 12, and in the Original Side of the High Court no fee is collected at all. While the Court Fees Act, Schedule I, article 10, prescribes the fee leviable on a vakalat, section 3 of the Act does not provide for the collection of any such fee either on the Original Side of the High Court or in the Presidency Court of Small Causes. While this could not have been deliberately omitted (for there is no apparent reason why it should be) it has led to the unexpected result that such vakalats become liable for stamp duty. In the case of vakalats filed in the Presidency Court of Small Causes the matter came up for consideration recently. Under the Stamp Act a power of attorney is chargeable to stamp duty. It is only when such a document is liable to court-fee, it is not liable to stamp duty. A vakalat is a power-of-attorney[235] and as the same is not chargeable to court-fee when filed in the Presidency Small Cause Court, it has been held liable to stamp duty. Consequently in Madras such vakalats are now engrossed on non-judicial stamp paper of the value of annas twelve.

It cannot be denied that any revenue collected on a power-of-attorney or vakalat (which is only a power-of-attorney of a special character) should be credited as court-fees and not as stamp revenue. There is a clear-cut difference between judicial and non-judicial stamps. A vakalat is a document pertaining to judicial procedure. Consequently, the result that a stamp fee is levied under the Stamp Act in respect of a document that pertains to the administration of justice is on the face of it illogical. But there is no getting out of it as the law stands at present.

191. In this connexion it may be mentioned that vakalats filed on the Original Side of the High Court stand exactly on the same footing as those filed in the Presidency Court of Small Causes. If vakalats and documents are generally liable to stamp duty, there is no reason for exempting those filed on the Original Side of the High Court. Such a charging provision in the Court Fees Act seems to be an omission rather than the grant of any exemption. That no exemption could have been intended will be evident from the fact that as such vakalats, if not liable to court-fee, are liable to stamp duty of Re. 1-8-0 as a power-of-attorney under article 48, clause (*g*) of the Stamp Act. There is no point in freeing such documents from court-fees and mulcting them with stamp duty. Further, if vakalats filed in the Small Cause Courts where the value of the subject-matter is small are liable to pay duty, there appears to be no justification for vakalats filed on the

[235] 58 B. 597; see also 19 N.L.J 267.

Original Side of the High Court where the litigation is of a higher order and relates to valuable property being exempt from court-fee. It is therefore desirable that instead of the court being compelled to levy a stamp duty of Re. 1–8–0 on all Original Side vakalats,—which it is submitted is imperative under the provisions of the Stamp Act—a uniform fee as is levied on vakalats on the Appellate Side may be collected. This will be no burden on litigants if it is realized that under the Stamp Act such documents are even now liable to a stamp duty of Re. 1–8–0 in respect of *each* person (advocate) authorized to appear. Such unstamped vakalats as are now received on the Original Side are liable to be impounded and stamp duty and penalty realized. It is mainly to regularize the procedure that the suggestion is made that fees may be levied on vakalats filed on the Original Side at the same rate at which the vakalats are charged on the Appellate Side.

192. At present the fees charged on vakalats in the Appellate Side is Rs. 3. This, it is submitted, is somewhat stiff in view of the fact that the fee in the mufassal courts is only Re. 1. In certain proceedings like civil revision petitions under section 25 of the Provincial Small Cause Courts Act or civil miscellaneous appeals the fee charged on vakalats appear rather too high and higher than the fee levied on the proceedings themselves. It is therefore recommended that some relief may be afforded by reducing the fee on vakalats from Rs. 3 to Rs. 2. This is the fee levied in the other Chartered High Courts of Bombay and Calcutta and even in the Federal Court of India.[236] It is expected that there will not be any resultant loss as the reduction will to a large extent be compensated by the levy of fees on vakalats filed on the Original Side. It is also recommended that a court-fee of As. 12 or Re. 1 as the Government might consider proper, may be levied on vakalats filed in Presidency Small Cause Courts instead of the illogical procedure of levying stamp duty.

193. If however the above recommendation regarding the charging of a fee on vakalats filed on the Original Side does not commend itself to Government, it is for consideration whether there is any justification for the levy of a non-judicial stamp duty on such documents which is imperative under the provisions of the Stamp Act. The only way out, short of the amendment of the Stamp Act, is to issue a notification exempting such vakalats from stamp duty. But it is submitted that there is absolutely no justification for this differentiation in the treatment in the case of vakalats filed in the High Court itself.

Chapter L.—Certified Copies.

194. Certified copies are prepared by the copyist department and the cost is collected in the shape of copy stamps which are at present As. 3 per sheet. This levy covers not only the actual cost of transcription, comparison and certification but also the stationery and incidental charges. The department is not only self-supporting but also generally leaves a small surplus. What is dealt with here is not the cost of the preparation of certified copies which are regulated by a special set of rules called the Copyist Rules,[237] but the levy of court-fee on all such certified copies whether issued out of or filed in courts or public offices. As obviously the cost of the preparation of the copies is covered by the cost of copy-stamps, this levy is not for any services rendered in respect of those copies but only for the benefit of general court-fee revenue. At least in the case of copies filed in court, the levy of court-fee might mean fees for documents that are to be exhibited and form part of the records of the suit but in the case of copies *issued out of* courts, this levy is solely for the purpose of augmentation of revenue. That is why Government has chosen to remit the fee in cases where the copies are applied for, for the private use of parties. The rules regulating this levy and the practice obtaining in the several courts and offices are not quite satisfactory and it is necessary to substitute a set of clear rules.

195. Article 8 makes liable to court-fee a copy of any document liable to stamp duty under the Indian Stamp Act when "left by any party to a suit or proceeding in place of the original withdrawn." This applies to very few cases, for instance, to cases provided for in Order 7, rule 17 of the Code. Where a document on which the plaintiff sues is "an entry in a shop-book in his possession or power", the plaintiff can produce the original and a copy which will be received and compared by the officer who testifying the copy to be correct will return the original to the party. This is a special provision to minimise the inconvenience that may be caused by an original account book being caught up in court. The principle on which the fee is collected on a copy prepared by a party himself (not a certified copy) is that the services of the court are sought for comparing the copy with the original and certifying the correctness of same. But it is not clear why when such kind of service is requisitioned in every case where a copy has to be compared and

[236] Rules of the Federal Court, Third Schedule, Part III, Rule 4.
[237] Vide the Civil Rules of Practice and Circular Orders, Vol. I, Chapter VIII.

certified as correct, a fee for the services rendered should be collected only where the original itself is liable to stamp duty and not otherwise. In almost all cases where this certifying takes place, they are not liable to stamp duty. The result is curious. If a document is not liable to stamp duty, then a copy of that is not liable to court-fee under Schedule I, article 8 of the Court-Fees Act. Then under article 24 of Schedule I [Article 20 of Schedule I-A of the Indian Stamp Act (Madras)], it is liable to stamp duty as under that article a copy or extract certified to be a true copy or extract, by or by order of, any public officer and not chargeable under the law for the time being in force relating to court-fee is liable to stamp duty. Taking for instance, a document not liable to stamp duty, a copy of it is not liable to court-fees under Schedule I, article 8. As the copy is not liable to court-fees, it is liable to stamp duty.[238] Thus the certified copy of a document becomes liable to stamp duty when the original itself is not so liable. On the other hand, taking the case of a document liable to stamp duty, the copy becomes liable to court-fee also.

It is not possible to understand the underlying principle of these rules. The only intelligible basis on which court-fee can be collected is for any service that the courts might render or as a tax on the document that is either filed in or issued by court. How this kind of taxation or collection of the fee can depend on the original document being assessed to stamp revenue or not is not easy to understand.

196. Rules regulating certified copies that are substituted by a party in place of originals withdrawn by him under the provisions of Order 13, Rule 9 of the Code of Civil Procedure are not satisfactory A copy of a private document (not being a decree or order or copy of an account, statement or a report or the like which are provided for in article 9 of Schedule I of the Court-Fees Act) is not liable to court-fee according to a recent Circular[239] issued by the High Court. When the copies of these documents are not liable to court-fee, then they come within Schedule I, article 24 of the Indian Stamp Act and stamp duty is leviable in respect of those copies. This is the practice now after the issue of the above-mentioned circular. When the stamp duty is so paid on the certified copies and they are substituted for the originals withdrawn, then under the provisions of article 8 in cases where the original document is liable to stamp duty, they become again liable to court-fee. To illustrate: If a mortgage-deed is filed as an exhibit in a suit and a certified copy thereof is applied for in order to enable the withdrawal of the original document, the certified copy is not chargeable under article 9, Schedule I, Court-Fees Act. Consequently, the certified copy is liable to stamp duty under Schedule I, article 24 of the Stamp Act. Then, when the certified copy is put into court, to get back the original mortgage deed, the certified copy becomes chargeable with court-fees under Schedule I, article 8 of the Court-Fees Act. This duplicate taxation works a hardship in several cases. It is suggested that this anomaly may be avoided by providing for preparation of copies and substitution under Order 13, rule 9, Civil Procedure Code, by the court itself which may then release the original for return to the party. But the wording in Order 13, rule 9 is to the effect that it is the duty of the party applying for a return of the original "*to deliver* to the proper officer a certified copy". This might only mean the issue of a certified copy to the party and the party presenting it to the proper officer. The copyist department has authority to deliver the copy only to the applicant. Apart from that under article 24 of the Stamp Act, Schedule I, the copy becomes chargeable to stamp duty as soon as it is certified to be a copy by the public officer, generally the superintendent of copyists. The substitution for the original is a later process. The effect of Schedule I, article 8 cannot be nullified by any proposal to the effect that the substitution may be made by the court itself. It is suggested that all this confusion, difficulty and anomaly may be avoided by the deletion of the words "not liable to stamp duty" in article 8 and adopting the amendment as proposed below to article 9.

197. The language of article 9 has caused confusion. There was divergence of opinion as to what all documents come within its purview. The words, "account, statement, report or the like" are not easy to construe. The words "and the like" were taken to refer only to such documents as were *ejusdem generis* with the documents that preceded it, viz., accounts, statements, reports. Therefore, it was held that article 9 did not refer to all and sundry documents that may be issued out of a court. In short, it was held that

[238] Indian Stamp Act (Madras), Schedule I-A, article 20: But in actual practice no stamp duty is charged on the copies compared and certified under Order 7, rule 17, Civil Procedure Code. This is also supported by certain Bombay decisions. In 26 Bom. 522, it was held that copies furnished under the corresponding provision of the old Code were not liable to stamp duty under article 24. There is a series of Bombay decisions on the question and the decision in 26 Bom. proceeded mainly on the principle of *stare decisis*. It has also been subsequently followed in 27 Bom. 150 at p. 154. This cannot however be considered to be strictly in accordance with the language of the statute as submitted above. The Stamp Act does not refer to instruments being chargeable to duty at the time of their being filed in court as has been assumed in 26 Bom. 522 at p. 525.

[239] P. Dis. No. 636 of 1936.

it does not apply to private documents.[240] In view of the fact that only certain kinds of documents as pleadings in a suit, statement of account, report and so forth, alone come within the ambit of the provisions of article 9, the other certified copies that are issued by a court become chargeable under article 24 of the Stamp Act. It is impossible to understand why certain certified copies issued by a court should be liable to court-fee and certain others should be liable to stamp duty. There was a time when there was a joint fee which embraced both judicial and non-judicial fees but a bifurcation took place as early as 1867 and after that it is only logical to collect court-fees in proceedings filed in civil courts and all papers issued out of or filed into civil courts. It is not quite in the fitness of things that some portion of what should be properly court-fee should be collected as stamp duty. In addition to it, there is also certain want of clearness as to what copy should be deemed liable to court-fee and what to stamp duty. The reference to certain kinds of documents in article 9 may be deleted and all certified copies made liable to court-fee. This cannot work any hardship to the litigant public.

198. In this connexion, this fact might also be noticed while certified copies issued by civil, criminal and revenue courts and from the chief executive officers are charged with court-fee, copies granted by the Registration offices, are not liable to court-fee. There are enquiries before the District Registrar in a registration case and when certified copies of depositions of parties or affidavits of parties or statements are granted, they do not come under article 9 and no fee is collected at present. In principle, there does not seem to be any the slightest difference between these classes of documents and those set out in article 9. Matters could certainly be made simpler by amending article 9 so as to include all copies issued by any court or *public officer*. It might perhaps be objected to that certified copies issued by officers who cannot be deemed to have given them in the discharge of their duties as a *court* cannot normally come under the head of court-fees but it is noticeable that under article 1, Schedule II all applications to such officers—as for instance to a revenue authority about some departmental matter which has to be dealt with purely departmentally—are assessable to court-fee. Again there is an exemption from court-fees of petitions of appeal by Government servants against orders of dismissal or reduction and copies of such orders filed in such appeals are also exempt. That the Government thought it necessary in Bengal to remit the court-fee due on such orders by Act VII of 1935, and by a notification our Government has also remitted the court-fees in such cases, indicate that but for the remission, they would have been liable to court-fees. It is too late in the day now to raise an objection that such copies should not be liable to court-fee. Article 9 should be made simpler and more comprehensive than it is at present.

199. Taking articles 6, 7 and 9, the principle is clear that decrees and orders and certified copies of other documents are liable to court-fee. The person applying for a copy, of course, makes the necessary deposit of copy-stamp papers which are calculated at As. 3 per sheet. Under the Copyist Rules, the fee collected by the sale of copy-stamps cover the cost of the services rendered by the copyist department; the fee levied on certified copies partake of the nature of a tax. Curiously, though in the Court-Fees Act, it was thought expedient as early as 1870 to levy this tax, Government have thought it expedient to remit the fees on all documents that are issued out unless they are again filed or recorded in any court of justice or received by any public officer.[241] Therefore, the bulk of the certified copies issued out of court, viz., those of decrees, orders having the force of decrees, other orders, pleadings, statements, reports, etc., are charged with court-fee, as specified in articles 6, 7 and 9 but by the Government of India Notification, where these copies are taken for private use, they are exempted from the fee which is leviable under the Act. In practical working a difficulty would occur, for it is not possible to know whether any certified copy is applied for for private use or not. In some courts, no doubt, there is the practice to note in a copy application that the copy is applied for for filing an appeal or for private use but in the majority of cases in almost all the courts, the purpose for which a copy is applied for is never noted. Even if the parties applying are made to note the purpose, what is there to prevent a person applying for a certified copy making an incorrect statement that he wants it for private use ? Of course, in all cases where the copies are filed in court, the fee leviable under the Act will be collected. But the provisions of the Act, as they stand at present are to charge every copy that is issued *out* of court.

The effect of this remission has perhaps not been fully realised. The Court-Fees Act provides for the levy of a fee on every copy issued out of court. Inasmuch as the Court-Fees Act made such a levy, the Stamp Act which is also a fiscal statute, exempts those

[240] P. Dis. 636 of 1936.

[241] Vide Government of India Notification clause (9) re-issued in Madras Notification No. 358, dated 10th September 1921 in clause (7).

documents from stamp duty obviously for the reason that it was already taxed with one kind of fee, viz., a court-fee (vide article 24, Stamp Act). Then by remission, copies ostensibly taken for private use—as I have already said the purpose is never enquired into—are exempt from court-fees. Thus while in fact no court-fee is collected, still for the purpose of escaping stamp duty, the construction placed upon such certified copies is that " they are *liable to court-fee* ".[242] The Stamp Act did not levy a fee on those documents as the Court-Fees Act levied a fee, but the Government have remitted the fee and therefore, *though there is no remission under the Stamp Act, the documents escape both the court-fee and the stamp duty.* Thus the remission granted by the Governor-General in effect nullifies the provisions of the Stamp Act. Its effect will better be understood if put as follows : If to-day, under the Court-Fees Act, the provision for charging certified copies with court-fee is deleted, then, the result will be the provision of article 24 of the Stamp Act will come into operation and those documents will be liable to stamp duty. Again, it is only some of the certified copies that happen to be charged under the Court-Fees Act, that get benefit of the provision and consequently escape the stamp duty. Those which the Court-Fees Act does not charge at all, as for instance, the copies of private documents which are considered to be not coming within the ambit of article 9 of the Court-Fees Act fall within article 24 of the Stamp Act. One wonders why some copies should be thus helped to escape stamp duty while the rest are left to shift for themselves.

200. The net result of the working of the Court-Fees Act, the Stamp Act and the Government remission is that till recently almost all certified copies that were issued out of court have been escaping court-fee. The position has been considerably altered by the recent High Court Circular according to which in the case of copies of private documents, article 24 of the Stamp Act is applied and stamp duty is collected. It appears that even this is not followed in revenue courts where such certified copies escape the payment of stamp duty which they are bound to pay under article 24 of the Stamp Act.

201. So far have been considered all the difficulties and the lack of uniformity in the matter of working these rules. To a large extent, this is due to the articles themselves. The fact that even as early as 1899, when the Stamp Act was passed, the Government of India thought fit to remit the fee on certified copies issued for private use also shows that they desired to show a concession and not to tax such instruments. But if certified copies that are issued out should be taxed it is obviously difficult to find out the purpose for which those copies are taken. One method is to abolish the fees altogether on all certified copies at the time of their issue, and charge fees on them only when they are filed in courts or before public officers, as exhibit fees are collected in the Original Side of the High Court. But it is clear that while the number of certified copies that are issued is numerous, only a portion of them are again refiled before any court or any public office. It is not clear whether it is the intention of Government that certified copies as such should not be subject to duty. If that were so, the principle is not clearly enunciated and in practice, it gives rise to two difficulties : (1) The wording of the exemption is that copies taken for private use of persons applying for them are so exempted. It is not stated that copies are to be charged only when they are re-filed and not when they are issued out and as already remarked it will be difficult to find out the real purpose for which certified copies are applied for and there is nothing to prevent a mistake or a wrong statement by a party. In fact from experience it can be stated that it is invariably applied for as for private use. (2) According to article 24 of the Stamp Act, copies not chargeable to court-fee become chargeable to stamp duty. The operation of this remission on the substantive provisions of the Court-Fees Act is to negative the collection of court-fee on such certified copies, at least on such of them as do not find their way back into court and even in the case of the rest, for some appreciable time. For that period, they become liable to stamp duty if the remission nullifies the provisions of the Court-Fees Act, while it is also a moot point whether the mere existence of articles 6, 7 and 9 of the Court-Fees Act, the effect of which is rendered nugatory by this remission notification, can avail a party to get round the provisions of article 24 of the Stamp Act.

201-A. These difficulties can be solved while at the same time giving effect to the intention of the Government to give relief in cases of certified copies applied for by a party for private use, if the following suggestion is adopted. In the case of copies of documents, be they decrees, or orders, statements or report, i.e., those documents covered by articles 6 and 7 and article 9 as amended as proposed above, an uniform fee of As. 4 (that is for consideration of Government) may be charged. If the copies are again filed or exhibited, then, the fee that is now leviable under articles 6, 7 or 9 as the case may be may be levied

[242] P. Dis. No. 636 of 1936.

less the court-fee already collected, viz., As. 4 on each copy. This will obviate the necessity of courts finding out the purpose for which any certified copy is applied for and the necessity of parties declaring the purpose of applying for copies. The light fee in the shape of a taxation of As. 4 will not be felt by the litigant public as oppressive and it steers clear of several difficulties and there is also the provision that where those documents again find their way into courts, a party who has made the fixed payment of As. 4 gets credit for same.

202. In this connexion attention is invited to the practice obtaining on the Original Side of the High Court and the Presidency Court of Small Causes. The Court-Fees Act does not apply to them and there is no provision for collection of the court-fees on certified copies issued by them. Consequently, those certified copies come within article 24, Schedule I of the Stamp Act and they are liable to stamp duty; it appears no stamp duty is now collected in respect of same. If it is thought hard that stamp duty should be collected, then, the only remedy is to make them liable to court-fee. They will then escape the stamp duty.

It therefore seems necessary to extend the operation of these articles to the Presidency Small Cause Court and the Original Side of the High Court. If it is not thought expedient to do so, a notification remitting the stamp duty should be issued under the Stamp Act.

Chapter LI.—Bail Bonds.

203. Several kinds of bonds given under the Code are brought within the rather wide language of article 6 of Schedule II which has also received a liberal interpretation from courts. Bonds filed in fulfilment of a condition imposed for the grant of certain reliefs of interlocutory nature have been held to be bonds " in compliance with orders of courts."[244] Even a bond filed with an application on which orders are passed subsequently has been held to come within the article because the acceptance by court of a bond previously furnished is equivalent to an order of court followed by compliance with it.[245] This may appear to be a liberal interpretation which is not strictly warranted by the rules of construction applicable to fiscal enactments. But if we go deeper, it will be found that the documents which are brought within this nominal charge of eight annas court-fee, escape the *ad valorem* stamp charge under article 15 of Schedule I of the Stamp Act. Hence a liberal interpretation of this article has really been beneficial to the subject.

204. The article as it stands applies only to bonds filed under the Codes of Civil Procedure and Criminal Procedure. What of bonds filed in courts under other enactments? They would be chargeable to stamp duty under article 15 of the Stamp Act. A bond filed under section 17 of the Provincial Small Cause Courts Act has however been held to come within the article because the procedure of the Code is applicable to proceedings to set aside small cause decrees[246] though an early Bombay decision[247] to the contrary has gained the approval of some authors[248]. In the case of bonds filed under section 17 of the Provincial Small Cause Courts Act, it was possible to hold that it was one filed under the Code of Civil Procedure because the procedure prescribed by the Code is to be followed by the Small Cause Courts under the provisions of that section. This is not the case when the bonds are filed in proceedings under the Provincial Insolvency Act, the Guardian and Wards Act, the Village Courts Act, etc., and such bonds cannot be treated as bonds filed under the provisions of the Code. They are therefore charged to stamp duty under the Stamp Act. There is no reason behind this discrimination between bonds filed in the course of judicial proceedings under different enactments. This would be avoided if the language of the article is made applicable to all bonds filed in the course of judicial proceedings before any court of law.

205. Another point to be noted is that Schedule II, article 6, provides for the charge of a fee for a bail bond among other documents and in section 19, item 15, bail bonds in criminal cases, recognizances to prosecute or give evidence and recognizances for personal appearance or otherwise are exempted. There have been cases where the fee provided for in the articles have been remitted either in whole or in part by Government by notification. This is an instance where even in the Act itself, a fee that is provided for in one part of the Act is exempted in another part of the Act. There are other instruments which do not fall

[244] 53 Cal. 101; A.I.R. 1929 Lah. 205.
[245] 68 M.L.J. 466.
[246] 68 M.L.J. 466.
[247] Bom.P.J. 1897, p. 167.
[248] Mulla and Pratt's Indian Stamp Act, Third Edition, p. 215.

under item 15 of section 19 and which are liable to fee under Schedule II, article 6, but are exempted by Government notification of remissions, as for instance a security bond to keep the peace. The combined effect of this charging article and the exempting section is to clothe the document with a character which will take it out of the ambit of the provisions of the Stamp Act. The general policy appears to be as far as possible, to avoid the levy of a duplicate fee under the Stamp Act and the Court-Fees Act and there are several provisions where a document ordinarily chargeable with stamp duty under the Stamp Act is not charged with stamp duty in case that document was also assessable to court-fee. A bail bond is one such document and will ordinarily be construed to be a bond chargeable under article 15 of the Stamp Act, but for the fact that this happens to be a document which is provided for by the Court-Fees Act (to use the language of the article 15 of the Stamp Act). It is not quite clear why the result of exempting such a document both from stamp duty and court-fees should be brought about by this rather circumlocutory method.

206. It is therefore expedient to amend article 6 of Schedule II and make it simpler. The words " given in pursuance of an order of court " may be construed not to apply to cases where the party had the option to furnish it or not, as for instance, where stay of execution of a decree is made conditional on security being furnished. In such cases, as there was no imperative direction to the party to file a bond which he need do only if he desired a stay, the document may be considered as not having been executed *in pursuance* of an order of court. But that is not the accepted view.[249] Again, there may be cases where the order of court might not precede the execution of a bond, as for instance, a party filing a bond which is later on accepted by the court for any purpose connected with that proceeding. Even in these cases, the approved view is that these bonds should be stamped as having been given in pursuance of an order of court, though the order is one that does not precede but one that follows the execution of the document.[250] These can be made clear by adding an explanation to this article to the effect that the words " given in pursuance of an order of court " in the body of the article will also include cases where a party has got the option to execute the bond and also where the execution precedes an order accepting a bond.

207. Regarding village courts, though there is a provision for taking bonds, those bonds do not come under Schedule II, article 6, for, they are not executed under the Code of Civil Procedure but under the Village Courts Act. Consequently, those documents are not chargeable to court-fee under the Court-Fees Act. Therefore they become chargeable under article 15 of the Stamp Act for the reason that they are bonds and " are not provided for in the Court-Fees Act." In practice, though, under the law, as it stands, village courts ought to collect stamp duty on such documents, they do not appear to be collecting it. This ought to be regularized. But the broad policy of Government seems to be to relieve litigants in village courts from every kind of fees. If article 6 of the Court-Fees Act is amplified by making it apply to all documents executed in pursuance of an order of court, that will apply to village courts as well.

Further in insolvency proceedings, the documents are not stamped under the Court-Fees Act though executed in pursuance of an order of the civil court. This results from the wording of Schedule II, article 6, which refers to the bonds being executed in pursuance not of orders made by courts in general but those made under the Civil or the Criminal Procedure Code. Consequently, bonds executed in insolvency proceedings do not come under article 6 and are to be stamped under the Stamp Act.

Under the Small Cause Courts Act also, where an *ex parte* decree is set aside, there is provision for the execution of a bond by the applicant. It is only by straining the language those bonds are construed to have been executed under the Code of Civil Procedure.[251] In order to remove all these strained interpretations and forced constructions and make the provision homogenous and comprehensive, it is recommended that the article may be suitably recast. All instruments of obligation executed in compliance of an order of court shall be chargeable to a fee of As. 8. The acceptance by a court of a bond previously furnished is equal to an order of court followed by compliance with it. Such a document as well as any document executed in fulfilment of a condition imposed for the grant of any relief will for the purpose of the levy of court-fee be considered to be a document executed in compliance with an order of court. If it is considered necessary that bonds executed in village courts should be exempted, Government might issue a notification remitting the fee.

[249] 53 Cal. 101; A.I.R. 1929 Lah. 205.
[250] 68 M.L.J. 466.
[251] 68 M.L.J. 466.

PART VI.—ARTICLES AND FORMS.

CHAPTER LII.—CLASSIFICATION OF ARTICLES.

208. Schedules I and II of the Act set out the tariff of *ad valorem* fee and fixed fees respectively. But this distinction between *ad valorem* and fixed fees is not always maintained in the several provincial amendments to the Act. For instance, Schedule II, article 17, specifies the fee in some cases dependent on the value of the subject-matter of the suit. It is therefore expedient to classify the articles that prescribe the fee on more logical grounds as plaints in suits, applications and petitions, appeals from orders and decrees, and miscellaneous documents such as vakalats, undertaking under section 49 of the Indian Divorce Act, bail bond, etc. It may be proper to include in the last category probates and letters of administration, succession certificates, etc., wherein a fee is collected which, in the generality of cases, approximate to a "duty" rather than court-fee though they are collected in the shape of court-fees. An appendix may be added setting out the table of rates for the levy of *ad valorem* fees computed according to the scales now recommended. The forms set out in the present schedule to the Court-Fees Act relating to probate matters may also be relegated to another appendix. As set out in paragraph 24 supra, a form may also be prescribed for the memorandum of valuation to be appended to a plaint containing all necessary particulars to check and verify the valuation of the subject-matter of the suit.

209. The articles in the schedules will have to be drafted in accordance with the recommendations made in the body of the report that are finally accepted. For the sake of convenience, a statement containing the applications where fixed fees are leviable and the fees to be collected are set out hereunder. The amendments suggested to the sections and articles of the Court-Fees Act are set out in Appendix I. New sections and articles have to be added to cover cases which are not provided for by the Act and about which recommendations are now made.

Applications and Petitions.

I.—Applications or petitions not coming within the succeeding special articles about special kinds of applications and petitions.

A.—Applications presented to Public Officers—

1 When presented to any officer of land revenue by any person holding temporarily settled land under direct engagement with Government and when the subject-matter of the application or petition relates exclusively to such engagement.	As. 2.
2 When presented to any municipal commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement.	As. 2.
3 When presented to any board or executive officer for the purpose of obtaining a copy or translation of any judgment, decree or order passed by such board or officer, or of any other document on record in such office.	As. 2.
4 In any other case	As. 12.

B.—Applications or petitions presented to courts—

1 Application or petition when presented to any civil court other than a principal civil court of original jurisdiction or to a Collector or other officer of revenue in relation to any suit or case in which the amount or value of the subject-matter is less hant Rs. 50.	As. 2.
2 Application or petition when presented to any civil, criminal or revenue court for the purpose of obtaining a copy or translation of any judgment, decree or order passed by such court, or of any other document on record in such court.	As. 2.

3 Application or petition when containing a complaint or charge of any offence other than an offence for which police officers may, under the Code of Criminal Procedure, arrest without warrant, and presented to any criminal court.	Re. 1.
4 Application or petition when presented to a civil, criminal or revenue court and not otherwise provided for by this Act.	As. 12.
5 Application or petition to deposit in court revenue or rent ..	As. 8.
6 Application or petition for determination by a court of the amount of compensation to be paid by a landlord to his tenant.	As. 8. (The Board of Revenue suggests this to be raised to Re. 1.)
7 Application or petition under section 30 of the Estates Land Act for enhancement of rent.	May well be fixed in consultation with the Board of Revenue.
8 Application or petition under section 32 of the Estates Land Act to enforce contract to pay additional rent.	Do.
9 Application or petition under section 38 of the Estates Land Act for reduction of rent.	Do.
10 Application or petition under section 40 of the Estates Land Act for commutation of rent.	Do.
11 Application or petition under section 42 of the Estates Land Act for alteration of rent with area.	Do.
C.—Applications or petitions when presented to the Board of Revenue.	Rs. 2.
D.—Applications or petitions when presented to the High Court.	Rs. 2.

II. Application to any civil court that records may be called for from another court.	When the court grants the application and is of opinion that the transmission involves the use of the post.	As. 12 in addition to any fee levied on the application under article I.
III (*a*) Application for leave to sue as a pauper.	....	As. 12 (the present scale is As. 8 while in all other applications it is As. 12).
(*b*) Application for leave to appeal as a pauper.	(*a*) When presented to a sub-court or district court.	Re. 1.
	(*b*) When presented to a High Court.	Rs. 2.

IV. Application or petition for interim injunction, attachment or arrest before judgment, appointment of receiver—

(*a*) When presented in a civil court or revenue court other than the High Court in relation to any suit or case in which the amount or value of the subject-matter is less than Rs. 50.	As. 12.
(*b*) When presented to the High Court	Rs. 4.
(*c*) In any other case	Rs. 2.

V. Application or petition for probate, letters of administration or succession certificate—

(*a*) When the amount or value of the property in respect of the probate or letters is applied for or the amount or the value of the debt or security in respect of which the certificate is applied for, is less than Rs. 1,000.	As. 12.
(*b*) in any other case	Rs. 5.
VI. Application or petition for appointment or declaration of a person as guardian of the person or property or both of minors under Guardian and Wards Act.	Rs. 10.

VII. Application or petition under section 95, C.P.C., for compensation for arrest or attachment before judgment or in respect of interim injunctions obtained on insufficient grounds, and applications under section 26 of the Provincial Insolvency Act for compensation for filing frivolous applications for adjudication in insolvency matters.	One-half of the fee payable in a suit instituted for the amount prayed for as compensation.
VIII. Application for opinion or advice or for discharge from a Trust or for appointment of new Trustees, under section 34, 72, 73 or 74 of the Indian Trusts Act, 1883.	Rs. 5.
IX. Application under the Indian Companies Act, 1913, for winding up a company.	Rs. 100.
X. Application or petition under section 47 and application under Order XXI, Rule 90 of the Civil Procedure Code—when filed in a District Munsif's Court, City Civil Court or a revenue court.	As. 12.
When filed in the Court of a Subordinate Judge or District Judge.	Rs. 2.
XI. Application or petition under rule 58 of Order XXI of the Civil Procedure Code regarding a claim to attached property when the amount or value of the property exceeds Rs. 5,000.	Rs. 5.
XII. Election petitions under the Municipalities Act and Local Boards Act.	Rs. 50.
XIII. Any other original petition by which any proceeding is commenced under any special Act, other than the petitions specially provided for above—	
(*a*) If filed in the District Munsif's Court, or the City Civil Court.	Rs. 5.
(*b*) If filed in the sub-court or district court	Rs. 10.
XIV. Petition presented to the High Court for a *writ of mandamus or certiorari*.	Rs. 20.
XV. Application for review of judgment	One-half the fee payable on a plaint or memorandum of appeal for the relief sought in the application.
XVI. (1) Revision petition presented to the High Court under section 115 of the Code of Civil Procedure or under section 75 of the Provincial Insolvency Act—	
(*a*) When the amount or value of the subject-matter of the petition does not exceed Rs. 1,000.	Rs. 5.
(In cases where there are no means of ascertaining the amount or value of the subject-matter of the petition, as distinguished from that of the suit to which it relates, the amount or value of the subject-matter of the said suit shall be the criterion for the application of this clause.)	
(*b*) When the amount or value of the subject-matter of the petition exceeds Rs. 1,000.	Rs. 10.
(2) Revision petition presented to the High Court under section 25 of Act IX of 1887 (Provincial Small Cause Courts Act).	Rs. 5.
XVII. Application for refund of lapsed deposits filed beyond six months of the date of the lapse—	
When the amount of the deposit does not exceed Rs. 50 ..	As. 8.
When such amount exceeds Rs. 50 and does not exceed Rs. 1,000.	Re. 1.
When such amount exceeds Rs. 1,000	Rs. 2.

N.B.—Section 19 (*XX*) is to be modified so as to make this levy legal. This should be made applicable to Presidency Small Cause Court as well.

PART VII.—EXEMPTIONS AND REMISSIONS.

Chapter LIII.

210. At present the remissions and exemptions are to be found in several clauses of section 19 and in the notifications issued under section 35, the former being statutory exemptions while the latter are made under the powers conferred on the Government under statute. A suggestion has been made to repeal section 19 altogether and to incorporate the exemptions therein in the notification to be issued under section 35. But there is no special reason why such statutory exemptions should be done away with and completely left to the discretion of the Government who can modify or vary them at any time. Such statutory exemptions are to be found in the Stamp Act, which also confers power on Government to remit the duty in other cases also. But there are several archaic provisions in section 19 which have to be omitted. They are dealt with below :—

Clause (*i*).—It is provided that a power of attorney to institute or defend a suit when executed by a military officer and not in civil employ is exempt from court-fee. Schedule II, article 10, provides that muktarnama or vakalatnama when presented for the conduct of any case is to be stamped as provided for therein. But a power of attorney to institute or defend a suit is not in the nature of a muktarnama or vakalatnama and cannot fall under article 10 of Schedule II. Powers of attorney authorizing a person to institute or defend a suit are presented and returned after reference. When they are produced simply as vouchers to enable a person to institute or defend a suit on another's behalf, no court-fee is payable in any event. Under those circumstances it is somewhat difficult to understand why the Legislature has made specific mention of such documents executed by military men as being exempted from court-fee thereby implying that such documents executed by non-military men are liable, while as a matter of fact they are not so liable. The clause may therefore be omitted.

Clause (*iii*).—The wording of this clause is somewhat misleading. "Order VIII, Rule I, Civil Procedure Code, provides that the defendant may, if so required by the court shall, at or before the first hearing * * * present a written statement." What is a "first hearing" is not defined in the Code. But it has been held to be the hearing when issues are framed. Article 1, Schedule I of the Court-Fees Act makes written statements pleading a set-off or a counter-claim, liable to be stamped. This has to be read with clause 3 of this section, and it is only a written statement in which there is no counter-claim or set-off that is exempt. But, the wording of the clause makes it appear, that it is only such written statements as are called for by court after the first hearing, that are exempt under this section. What about those written statements that contain no claim for set-off, and are filed without being called for by court and before the first hearing of a suit? They too are not liable to the payment of court-fee. The Court-Fees Act is a fiscal enactment and unless a particular document is specified in the Act as liable for the payment of court-fee, no court-fee could be collected in respect of same.[252] According to article 1, Schedule I, only such written statements as contain a counter-claim or a claim for set-off are so taxable. Hence all other written statements, whether called for by court or not, whether filed before, at or after the first hearing, are also not taxable. The restricted wording of clause 3 is rather misleading. Again, in a case where the defendant has filed no written statement but the court called for one under Order VIII, rule 1, Civil Procedure Code, and a written statement is then filed containing a counter-claim or set-off, it might be contended that the written statement is not liable to court-fee, if this clause 3 is taken to govern the provisions of article 1, Schedule I of the Act. But that cannot be the intention of the Legislature. On the whole it appears desirable to delete clause 3. Proposals are also made elsewhere charging court-fees on written statements in certain special kinds of suits.

Clause (*v*).—This may be amplified so as to apply to all proceedings and documents filed in village courts.

Clause (*xx*).—This has to be modified to provide for levy of court-fee on belated applications for refund of lapsed deposits.

Clause (*xxi*).—Reference to chaukidari assessment under Act XX of 1856 may be omitted.

Clause (*xxiii*)—May be omitted as being inapplicable to Madras.

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[252] 5 Bom. 400; 12 C.L.R. 367.

211. Besides the statutory exemptions that are set out in section 19, there are several remissions and reductions granted by the Government by notifications issued under section 35 from time to time. Some of them are dealt with in the body of the report and may become obsolete after the passing of the new Act (*e.g.*, remission of court-fee on certified copies granted for private use; remission of court-fee in suits for fractional share of Government lands, etc.). The several items mentioned in the present list of remissions and reductions may have to be considered afresh and re-issued after the new Act is passed.

It may in this connexion be pointed out that in certain cases, where a fixed fee is leviable under the Act, it may happen to be more than the *ad valorem* fee on the amount or value of the property directly or indirectly involved in them. It is therefore desirable to reduce the fee in such cases to such *ad valorem* fee. This may be done either by a separate section or by a notification under section 35 of the Act.

212. *Concluding remarks.*—The recommendations made above are not confined to the consideration of the sections and articles in the Court-Fees Act, the anomalies and defects found therein, the difficulties experienced in the practical working of the Act, and the inequalities in the incidence of court-fee, but attention is also drawn to several omissions in the Act and the various devices adopted by litigants to escape the payment of the proper fee. Destructive criticism is useful only to realize the defects and devise ways and means to cure them. It is comparatively easy to diagnose an evil but far more difficult to suggest an effective remedy. Consequently, it is that portion of the report where, after noticing the several imperfections in the present law, recommendations are made to steer clear of the difficulties, it is submitted that forms comparatively the more difficult and important part. As has been indicated in the opening paragraph of the report, every topic that has been discussed in this report has been the subject of conflicting views and consequently, there will be several alternative solutions for every difficulty that has been set out in considering this report. Which of them is the best and which will fit in in the general scheme that has been planned out is the important factor that should determine the acceptability or otherwise of these possible solutions. Further, questions regarding the levy of fee cannot be considered in the abstract but have to be taken with reference to the existing state of things. Court-fee receipts are an important item of revenue and in the fixation of fees, it has to be remembered—and it has also been indicated in the Government Order—that a shrinkage of the revenue could hardly be afforded. Consequently, the converse of the method adopted in 1922 when fees were raised by 50 per cent allround cannot now be adopted, and the fees reduced in all cases by a fixed percentage, without examining whether the fee is fair, equitable and proper in each case. What has been attempted is to see that the present court-fee revenue does not suffer, by suggesting relief where it is needed and increasing the fee where it could properly be done and by eliminating as far as possible the uncertainty of the law which gives a handle to a clever litigant to escape the payment of court-fee by juggling with the pleadings. Some of the recommendations that have been made relate to topics that have not been tackled either by Legislatures of our Presidency or elsewhere and therefore must, to some extent, partake of the nature of an experiment. In such cases, it is but proper that there should be a periodical reconsideration of the new Act in the light of experience gained. As has been remarked by the first and second Indian Law Commission, the enacted law ought, at intervals of few years, be reviewed and amended so as to make it certain, and as complete as possible by incorporating everything that may from time to time be deemed fit to be a part of it. Though every care has been taken to envisage all possible actions and set of circumstances that may arise in court and adequate provision made, still, it is quite possible that new difficulties may come to light in the actual working and more subtle methods of evading the Act may be invented by litigants. Those who circumvent the law are as keen and as busy as those who make the law. It is submitted that it is therefore necessary to have a watchful eye in the actual working of any new measure that might be the outcome of this enquiry and have the law examined and overhauled periodically to solve the difficulties and prevent any abuse and not permit it to slumber for over half a century as has been the fate of the old Act of 1870.

It is also desirable to secure a proper understanding of the new provisions by the ministerial officers of courts and to see that a uniform practice is adopted in all courts in the interpretation and administration of the new provisions. For this purpose and for the purpose of preventing leakage due to other causes, it is necessary that there should be a regular and periodical inspection of the courts by a well-equipped and trained staff. The necessity for this will be more and not less after the passing of the new Act. Several proposals made herein involve a radical departure from the present scheme of levy, and the ministerial officers of courts have to be familiarized with them in all their details. Several cases which are at present charged to fixed fees by a rule of thumb method are

proposed to be charged to *ad valorem* fees depending on the value of the subject-matter. In some cases court-fee is proposed to be levied from defendants as well. In some, the question of court-fee leviable from the parties has to be examined afresh after the framing of issues. The scope of the inspection also would be much wider than now because the levy of court-fee in insolvency proceedings and land acquisition cases and other miscellaneous matters for which special fees are proposed to be fixed will have to be scrutinized. The scrutiny will also be more fruitful than now on account of the machinery for the collection of deficit court-fee being improved in several respects, for instance, the collection of the fee as a public demand. For all these reasons, the inspecting agency has to be strengthened further, if possible, and means devised to make their work more effective.

HIGH COURT OF JUDICATURE, MADRAS,
22nd December 1938.

R. SATYAMURTI AYYAR,
Special Officer.

APPENDIX I.

SECTIONS AND ARTICLES OF THE COURT-FEES ACT AND MODIFICATIONS THERETO RECOMMENDED IN THE REPORT.

Sections.

Section 1.—Regarding the extent and the application and the date of the commencement of the Act has to be amended.

Section 2.—This has both to be cut down and amplified deleting the provisions that do not apply to the Presidency of Madras and incorporating definitions agreeably to the recommendations contained in paragraph 23 of the report.

Section 3.—This is quite archaic (vide reference to the fees payable to clerks and officers of the High Court). This has to be amended and recast. (Paragraph 20 of the report.) This being a charging section the items set out thereunder as applicable to the High Court, Original Side, and the Presidency Court of Small Causes should be set out specifically and amplified.

Section 4.—Certain amendments to this section are necessary as set out in paragraph 20 of the report.

Section 5.—An important alteration has been recommended which affects the finality of the decision of the Taxing Officer by investing courts with powers to revise the Taxing Officer's decision in proper cases. (Paragraph 27 of the report.)

Section 6.—Verbal alterations are necessary and the section may be assimilated with section 4. (Paragraph 20 of the report.)

Section 7.—(i) Verbal alterations are necessary as the words within brackets are not necessary.

(ii) This has to be amplified by reference to other classes of suits that have to be brought under this. (Vide paragraph 68 of the report.)

(iii) No change.

(iv-*a*) To be modified. (Vide paragraphs 69–70 of the report.)

(iv-*b*) This has to be entirely recast. (Vide paragraphs 90–94 of the report.)

(iv-*c*) This also has to be entirely recast. (Vide paragraphs 81–84 of the report.)

(iv-*d*) Here also the principle of valuation has to be revised. (Vide paragraph 85 of the report.)

(iv-*e*) This has also to be recast and clarified. (Paragraph 132 of the report.)

(iv-*f*) There is to be an entire modification in the matter of assessment and the procedure to be adopted. (Paragraphs 99–102 of the report.)

(iv-A) To be modified. (Vide paragraphs 132–137 of the report.)

(v) The whole is to be recast and the matter simplified by adopting the market value. (Vide recommendation in paragraphs 71–73 of the report.)

The Proviso.—This becomes unnecessary in view of the recommendation in paragraph 72 of the report.

The Explanation.—This also has to be deleted as unnecessary in view of the fixation of the market value as the true value.

(vi) This has also to be modified agreeably to the recommendation in paragraph 74 of the report.

(vii) No alteration.

(viii) This has to be entirely recast as the principle of levy of court-fee now proposed is different. (Vide paragraphs 113–118 of the report.)

(ix) The whole paragraph has to be recast in view of the recommendations in the report. (Pragraphs 60–66.)

(x) (*a*) *to* (*c*). No change.

(*d*) This is not " specific performance " but a suit to enforce an award and the phraseology of the section may be changed accordingly.

(xi) The entire paragraph has to be recast and substituted by a fresh set of rules as per the recommendations in paragraphs 119–122 of the report.

Section 8.—To be repealed. In view of amendment of section 54 of the Land Acquisition Act, the appeal contemplated by this section is not an appeal against an order and is governed by the residuary provision in Schedule I, article 1 of the Court-Fees Act under which also court-fees will be computed on the same basis as is provided in this section. Hence this section may be deleted.

Sections 9 *and* 10.—They should be deleted and a fresh set of rules substituted. (Vide paragraph 24 of the report.)

Section 11.—A modification of the procedure has been suggested and the section has to be entirely recast. (Vide paragraphs 75–78 of the report.)

Section 12.—(i) This also will have to be modified and amplified. (Vide paragraphs 28–33 of the report.)

(ii) This has also to be modified. (Vide paragraph 34 of the report.)

Section 13.—This has to be modified extending the principle to other cases. (Vide paragraphs 36–50 of the report.)

Section 14.—This becomes unnecessary and has to be deleted. (Vide paragraph 164 of the report.)

Section 15.—This has to be modified and amplified. (Vide paragraph 39 of the report.)

Section 16.—This has already been repealed.

Section 17.—This has to be modified and recast setting out the cases where cumulative fee can be charged. (Vide paragraphs 138–140 of the report.)

Section 18.—No change.

Section 19.—Some of the exceptions are redundant and some have been already repealed. The archaic provisions in the section have to be deleted. (See paragraph 210 of the report.)

Sections 19 (*a*) *to* (*k*).—These should be thoroughly overhauled. The procedure has to be radically modified and protection given both to the subject as well as to the Crown. They have to be recast and drafted according to the recommendations contained in Chapter XLII of the report.

Section 20.—No change.

Section 21.—This need not be provided for in the Act and may be relegated to a notification that the Government may issue under the Act.

Sections 22 *and* 23.—The same remarks as for section 21.

Section 24.—Already repealed.

Sections 25 *to* 27.—No change.

Section 28.—This may be modified on the lines suggested in the Court-Fees Bill of 1924. The present section is somewhat cumbrous.

Sections 29 *and* 30.—No change.

Sections 31 *and* 32.—Already repealed.

Sections 33 *and* 34.—No change, but it is suggested that the rule-making powers of the Government may be relegated to one section.

Section 35.—This has to be amplified by giving powers to the court to suspend the collection of court-fee for a fixed period. (Vide paragraph 51 of the report.)

Section 36.—May be deleted as not applicable to the present state of practice.

Articles.

Schedule I—*Article* 1.—This has to be modified and thoroughly recast. (Vide paragraphs 53–54 and 141 of the report.)

Article 2.—This becomes unnecessary in view of the alteration in the scale of fees to be charged in money suits recommended in paragraphs 53–54 of the report.

Article 3.—No change.

Article 4.—This has to be deleted. (Vide paragraph 164 of the report.)

Article 5.—To be modified. (Vide paragraphs 164–166 of the report.)

Articles 6 *to* 9.—To be recast and modified. (Vide paragraphs 194–200 of the report.)

Article 10.—Already repealed.

Article 11.—No change.

Article 12.—This has to be changed as for Succession Certificates under the Indian Succession Act. The rates also will have to be changed and the entire article recast. (Vide paragraph 187 of the report.)

Articles 12 (*a*), 13, 14 *and* 15 are not applicable to Madras and have been repealed.

Table of ad valorem *Fees* has to be computed afresh and published in accordance with the recommendations made in paragraphs 53–54 of the report.

Schedule II—*Article* 1.—This has to be modified. (Vide paragraphs 149–163 of the report.)

Article 1 (*a*).—This may be assimilated with article 1.

Article 2.—The fee may be raised to As. 12. (Vide Table of fees under paragraph 209.)

Article 3.—No change.

Article 4 has been repealed in Madras.

Article 5.—To be modified. (Vide paragraph 121 of the report.)

Article 6.—This article has to be thoroughly recast. (Vide paragraphs 203–207 of the report.)

Article 7.—No change.

Articles 8 *and* 9 already repealed.

Article 10 has to be changed and its scope extended and fees modified. (Vide paragraphs 190–193 of the report.)

Article 11 has to be modified. (Vide paragraphs 172–174 of the report.)

Article 12.—No change.

Article 13 already repealed.

Article 14 has to be modified regarding the fee to be levied. (Vide paragraph 127 of the report.)

Articles 15 *and* 16 already repealed.

Article 17 (i) has to be modified. (Vide paragraphs 113–118 of the report.)

Article 17 (ii).—No change. A new class of suits is also proposed to be brought under this provision. (Vide paragraph 147-A.)

Article 17 (iii).—No change.

Article 17-A (i).—To be recast. (Vide paragraphs 81–84 of the report.)

Article 17-A (*ii*).—May be deleted as this is akin to a suit to set aside a document or decree and may be included in the provisions relating to them. (Vide paragraph 137 of the report.)

Article 17-A (iii) has to be recast entirely. (Vide paragraph 112 of the report.)

Article 17-B.—To be modified. (Vide paragraphs 145–147 of the report.)

Article 18.—This article has to be amplified so as to include applications for enforcing foreign awards which also may be charged to the same court-fees as the applications for enforcing local awards dealt with under this article.

Article 19.—No change.

Article 20.—To be modified. (Vide paragraphs 126, 127 and 129 of the report.)

Article 21.—Also to be modified. (Vide paragraphs 126, 127 and 129 of the report.)

Schedule III.—One more form has to be prescribed for the details of valuation in suits and appeals and added to this schedule.

APPENDIX II.

Effect of Recommendation regarding Scale of Fees on Court-Fee Revenue.

It is observed in paragraph 53 of the report, the scale of court-fee prescribed for suits, the amount or value of the subject-matter in which is below Rs. 1,000 is heavy except in the case of small cause suits, and suits of a small cause nature, which do not exceed Rs. 500 in value. In fact, the scale is perhaps among the highest obtaining in all the Provinces. Vide Table (Appendix IV). There is a strong feeling that this scale should be reduced to the rate which was in force prior to the Madras Court-Fees Amending Act of 1922. In order to have an estimate of the shrinkage of revenue on account of this reduction, figures were collected regarding suits filed in 1937 in the various courts of the Presidency on which *ad valorem* court-fees were levied, leaving out of account small cause suits and suits of a small cause nature in which court-fees are collected at the lower scale. The aggregate value of the subject-matter of such suits under Rs. 1,000 in value is Rs. 1,03,31,561. The difference of court-fee calculated at 11½ per cent (present scale) and 7½ per cent (proposed scale) on this amount comes to Rs. 3,87,459. In respect of suits between Rs. 1,000 and Rs. 10,000 in value, also there will be shrinkage of revenue on account of the proposal because the scale of court-fee for the first Rs. 1,000 in each of such suits would be reduced, the scale remaining the same for the balance. The number of such suits comes to 7,801 and the difference of the levy of fees will arise in respect of the first thousand rupees of each of them. This differences has to be calculated on Rs. 78,01,000, which comes to Rs. 2,91,738. Altogether, the reduction of revenue in respect of suits below Rs. 10,000 in value can be estimated at Rs. 6,79,197. In order to make up at least in part for this reduction, it is proposed to have a flat scale of 6 per cent on suits exceeding Rs. 5,000 in value instead of the current regressive scales of 6 per cent from Rs. 5,000 to Rs. 10,000, 4 per cent from Rs. 10,000 to 20,000, 3 per cent from Rs. 20,000 to 30,000, 1½ per cent from Rs. 30,000 to Rs. 50,000 and ⅗ per cent above Rs. 50,000. This enhancement will not be felt as hard or oppressive by the class of litigants who are affected by it as they are the wealthier class of litigants. It is also in conformity with the accepted principles of taxation. One of the District Judges would even have progressive *enhancement* on sums above a certain limit, which ranges up to 12½ per cent. But this is against the principle of regressive scale now obtaining. The present scale is proposed to be modified only to the extent of having 7½ per cent up to Rs. 5,000 and a uniform flat rate of 6 per cent above Rs. 5,000. The latter rate is estimated to yield a surplus of only Rs. 1,35,958 in respect of suits above Rs. 10,000 in value, on account of the comparatively small number of such suits. In respect of suits between Rs. 10,000 and Rs. 20,000 in value, there would be a net increase of revenue of Rs. 4,115 (after deducting Rs. 7,725 being the loss of revenue on the first one thousand rupees of each of the suits) from the increase of revenue on the amount in excess of Rs. 10,000 in each suit. In respect of suits between Rs. 20,000 and Rs. 30,000 in

value, there would be a net increase of revenue of Rs. 11,638 (after deducting a reduction of revenue of Rs. 1,650 on the first Rs. 1,000 in each of the suits) from an increase of revenue of Rs. 13,288. In respect of suits between Rs. 30,000 and Rs. 50,000 in value, there will be a net increase of revenue of Rs. 33,790 (after deducting the reduction of revenue of Rs. 1,575 on the first one thousand rupees in each of the suits) from an increase of revenue of Rs. 35,365. In respect of suits above Rs. 50,000 in value, there would be a net increase of revenue of Rs. 86,415 (after deducting a reduction of revenue of Rs. 938 on the first thousand rupees in each of the suits) from an increase of revenue of Rs. 87,353. In all, the total increase of revenue on account of the suits above Rs. 10,000 in value comes to Rs. 1,35,958, with the result that the reduction of revenue consequent on the proposal as to re-adjustment of the scales comes to Rs. 5,44,039. The maximum fee may also be fixed at Rs. 10,000.

A table is given below relating to figures for the various classes of suits on which the above calculation is made :—

Suits instituted in 1937.

—	Number.	Total value.	Reduction of revenue.	Increase of revenue.
(1)	(2)	(3)	(4)	(5)
		RS.	RS.	RS.
I. Suits, the amount or value of the subject-matter of which does not exceed Rs. 500 on which *advalorem* court-fees have been paid at the higher scale prescribed in article I of Schedule I	Unnecessary.	52,85,301	3,87,459	
II. Suits, the amount or value of the subject-matter of which exceeds Rs. 500 but does not exceed Rs 1,000 on which *ad valorem* court-fees have been paid	Do.	50,46,260		
III. Suits, the amount or value of the subject-matter of which exceeds Rs. 1,000 but does not exceed Rs. 5,000 on which *ad valorem* court-fees have been paid	7,168	Unnecessary.	2,68,800	
IV. Suits, the amount or value of the subject-matter of which exceeds Rs. 5,000 but does not exceed Rs. 10,000 on which *ad valorem* court-fees have been paid	633	Do.	23,738	
V. Suits, the amount or value of the subject-matter of which exceeds Rs. 10,000 but does not exceed Rs. 20,000 on which *ad valorem* court-fees have been paid	206	28,49,317	..	4,115
VI. Suits, the amount or value of the subject-matter of which exceeds Rs. 20,000 but does not exceed Rs. 30,000 on which *ad valorem* court-fees have been paid.	44	11,02,946	..	11,638
VII. Suits, the amount or value of the subject-matter of which exceeds Rs. 30,000 but does not exceed Rs. 50,000 on which *ad valorem* court-fees have been paid	42	16,25,899	..	33,790
VIII. Suits, the amount or value of the subject-matter of which exceeds Rs. 50,000 on which *ad valorem* court-fees have been paid ..	25	22,43,571	..	86,415

APPENDIX III.

Certain Miscellaneous Suggestions.

1. *Court-fee inspection.*—In the concluding remarks in the report, a suggestion has been made for devising ways and means for making the work of the inspecting staff more effective than now. The effectiveness of their inspection depends on their not raising all and sundry objections indiscriminately or based on the market value of the subject-matter of suits about which the Courts are the better Judges. I have examined thousands of check-slips issued by the Court-fee Examiners and the remarks of the Presiding Judges thereon and notice that the procedure adopted is not as effectual and fruitful as it could be.

At present the Court-fee Examiner makes a report to the court about short levy, notice goes to the party and order is passed after hearing him. The opposite party may or may not support the view of the Examiner. The services of the Government Pleader cannot obviously be requisitioned in every case, as it would be expensive. In the majority of cases, the question has to be decided on the report of the Examiner after hearing the party who is sought to be charged. It is possible that the opposite view may not be fully presented before the court. It is desirable to ensure greater attention being paid to court-fee matters. This can be done by conferring power on a revising or appellate authority to correct the decision of the lower court. Formerly revision petitions were being filed in the High Court by Government. But in the United Provinces, provision is made for the appellate court being invoked in such cases by appeals.* It is for consideration whether this new provision may well be adopted here also. It would not be necessary to have a formal appeal or petition filed by the Government Pleader. The Government Pleader need not even be asked to argue the matter for Government except in cases of exceptional difficulty or where the amount involved is high. If the Government case is well set out in a supplemental note meeting the points dwelt on in the order of the court, there would be little necessity to hear the Government Pleader in the majority of cases.

The suggestion made in the above paragraph pre-supposes the existence of an officer at the headquarter station corresponding to the Chief Inspector of Stamps in the United Provinces. If he is to have the power of moving the appellate court by an informal application as provided in the United Provinces Act, a special provision has to be inserted in our Act, also. The Chief Inspector would appeal only when he considers that the order is not correct. He may, on requisition by him, be supplied with copies of any proceeding or documents that he may desire to have from the lower court. If after a perusal of the original report of the Examiner, the order of the court and the further papers, if any, he considers that the order of the lower court has to be further considered, he may move the court to which appeal would lie in the main case, by a written application accompanied with a further note containing his reasons why the order should be reversed or modified. It is provided in section 6-A (3) of the United Provinces Act that if a party appeals against a court-fee decision upholding the objection of the Examiner, a copy of such appeal should be sent to the Chief Inspector who is expected to put forward the Government case before the appellate court. This he can do only by a supplemental note meeting the grounds of objection filed by the party, and supporting the order on other grounds as well, if any. If the procedure obtaining in the United Provinces is adopted here and a Chief Inspector of Court-fees is appointed then the details may be worked out later.

In the High Court, the plaints and other records received from the lower courts for reference in appeals filed in the High Court, have to be examined. The appeals alone are now examined and not the lower court records. It is suggested in paragraph 35 of the report that the deficit court-fee due in the lower court may be made collectable as a public demand, when the suit is before the appellate court, whether the appeal relates to the entire subject-matter of the suit or only part of it. This provision if enacted would apply to all pending appeals. So the scrutiny of the records above suggested would be profitable. The records in all the pending cases will have to be examined and the records in future cases examined as and when they are received. The Chief Inspector may be entrusted with this work also.

It is expected that the receipts resulting from the activities of the examining staff would more than pay for the expenses incurred on them. But even otherwise, the staff is necessary in order to prevent leakage of revenue. The existence of a well-organized inspecting staff will also ensure greater vigilance on the part of the lower court officers.

2. *Madras Civil Courts Act.*—Certain recommendations regarding amendment of the Act are set out in the note appended to my report on the Suits Valuation Rules Committee's Report. It has been recommended in the body of this report that suits relating to immovable properties should be valued at an amount representing the real value of the properties and not by any method which will not reflect their true value. The result will be that a number of suits relating to immovable property which are now instituted in District Munsifs' Courts will on account of the increased valuation have to be instituted in the Subordinate Judges' Courts. This might necessitate an increase in the number of superior courts and a reduction of District Munsifs' Courts. The District Munsifs are competent to deal with this litigation which is deflected from their courts to superior courts. The balance may be maintained by increasing the pecuniary limits of jurisdiction of District Munsifs to Rs. 5,000. In the City of Madras there has been such an expansion of the jurisdiction—present and potential—of the Madras City Civil Court. This is a matter for consideration by Government.

3. *The Madras City Civil Court.*—In the Court-Fees Act, the City Civil Court is bracketed with a District Munsif's Court. But the present jurisdiction of the latter is Rs. 3,000 while that of the former is now raised to Rs. 5,000 and may still further be raised to Rs. 10,000. The City Civil Court is presided over by Judges of the rank of a Subordinate Judge. It is therefore for consideration whether with reference to the scale of fees to be levied, the City Civil Court may not be classed with Subordinate Judges' Courts instead of District Munsifs' Courts.

4. *Process establishments in the City.*—The question of the grant of travelling allowance and batta is now under consideration of Government. That may not affect the process staff in the city as every beat is generally within five miles from the court-house. The City Civil Court and the Small Cause Court have separate process establishments and execute the processes within the city. So far as the processes on the Original Side of the High Court are concerned, the work is done by the establishment of the Sheriff of Madras. The process fee levied by the Sheriff is regulated by the Original Side Rules of the High Court, the process-fees in the City Civil Court by a separate table of fees framed by the High Court under section 20 of the Court-Fees Act and the process fees

* Section 6-B of the United Provinces Court-Fees Act as amended recently.

in the Small Cause Court by another set of rules. The expediency of unifying the different process establishment may well be considered. If so they can be all placed under the Sheriff. Even if the High Court is kept separate the staff in the City Civil Court and the Presidency Court of Small Causes may well be assimilated as there is nothing to differentiate processes issued by both the courts. Further in the mufassal, where there are several courts in a district centre, there is only one central Nazarat that execute the processes of the several courts. It is for consideration whether it could not well be copied here and a single process establishment constituted at least for the City Civil Court and Small Cause Court.

5. *Court-fee labels for use in the High Court.*—The court-fee notification of Government, dated 27th March 1929—vide page 268 of the Madras Stamp Manual—states that the fees referred to in the first paragraph of section 3 of the Court-Fees Act shall be denoted by the use of court-fee labels in the High Court, bearing the words "High Court Service." This special stamp is, it is, submitted hardly necessary as court-fee is levied in *all* courts in the shape of labels only to facilitate collection, and all such fees fall under one head of revenue. In order to minimize cases of fraud and wrong uses of court-fee labels attached to old records, and such things have to come to light due to laxity in the observance of rules relating to cancellation of labels, it is suggested that court-fee labels may be notified to have currency for a specified period, say, four to six months from date of purchase. This cannot cause any hardship at all, as court-fee stamps are purchased only to be used immediately. If unused for that period, provision may be made for refund.

APPENDIX IV.

A.—Comparative Table of Ad valorem Fees.

(1)	(2) RS. A.	(3) RS. A.	(4) RS. A.	(5) RS. A.	(6) RS. A.	(7) RS. A.	(8) RS. A.	(9) RS. A.	(10) RS. A.	(11) Maximum court-fee. RS. A.
Valuation	1,000 0	2,000 0	5,000 0	10,000 0	20,000 0	30,000 0	40,000 0	50,000 0	1,00,000 0	..
Original Court-Fees Act	75 0	125 0	275 0	475 0	775 0	975 0	1,075 0	1,175 0	1,425 0	3,000 0
Bengal	112 8	187 8	412 8	750 0	1,200 0	1,500 0	1,800 0	2,100 0	2,475 0	10,000 0
Bihar	97 8	172 8	397 8	697 8	1,147 8	1,447 8	1,597 8	1,747 8	2,122 8	No maximum.
Bombay	75 0	125 0	275 0	575 0	1,025 0	1,325 0	1,475 0	1,625 0	1,925 0	10,000 0
Central Provinces..	75 0	135 0	315 0	565 0	965 0	1,265 0	1,415 0	1,565 0	1,865 0	5,000 0
The Punjab	112 8	187 8	412 8	712 8	1,162 8	1,462 8	1,612 8	1,762 8	2,062 8	No maximum.
United Provinces (This has been recently enhanced).	107 8	170 0	357 8	607 8	982 8	1,232 8	1,357 8	1,482 8	1,795 0	4,500 0
Madras	112 7	187 7	412 7	712 7	1,162 7	1,462 7	1,612 7	1,762 7	2,062 7	No maximum.
Fees suggested now	75 0	150 0	375 0	675 0	1,275 0	1,875 0	2,475 0	3,075 0	6,075 0	10,000 0

B.—Comparative Table of Probate Fees.

(1)	(2) RS. A.	(3) RS. A.	(4) RS. A.	(5) RS. A.	(6) RS. A.	(7) RS. A.	(8) RS. A.	(9) RS. A.	(10) RS. A.	(11) Maximum court-fee. RS. A.
Valuation	1,000 0	2,000 0	5,000 0	10,000 0	20,000 0	30,000 0	40,000 0	50,000 0	1,00,000 0	..
Orginal Court-Fees Act	..	40 0	100 0	200 0	500 0	750 0	1,000 0	1,250 0	3,000 0	..
Bengal	..	..	100 0	200 0	500 0	800 0	1,100 0	1,400 0	3,400 0	Steep rise in scale above one lakh.
Bihar and Orissa	..	..	100 0	200 0	500 0	800 0	1,100 0	1,400 0	3,400 0	..
Bombay	..	20 0	80 0	180 0	480 0	780 0	1,080 0	1,380 0	3,380 0	Steep rise in scale above one lakh.
Central Provinces..	..	40 0	100 0	225 0	550 0	850 0	1,150 0	1,450 0	2,950 0	..
United Provinces	..	40 0	100 0	200 0	500 0	750 0	1,000 0	1,250 0	3,000 0	4 per cent above one lakh.
Madras	..	40 0	100 0	225 0	550 0	850 0	1,150 0	1,450 0	2,950 0	..