

ORDINARY, PRINTED.

Jud DEPARTMENT
G.O. dated 19 Dec 1894
No. 3135

INDEXED.

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[Despatch Abstract.]

Delegation of Council

Parsing orders on
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& Dep. Secy
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22-9-13

1-12-13

15-4-14

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18-11-25

2798 (A) G. O. C. P. C.
Final 1989

No. 19/102

FROM

C. J. LYALL, Esq., C.I.E.,
Secretary to the Government of India.

TO

The Chief Secretary to the Government of Madras.

Home Department.
Judicial.

Calcutta, the 4. December 1891.

SIR,

I AM directed to forward a copy of a communication from the Bengal Government giving cover to a letter* from Mr. J. G. Charles, District Judge of Shahabad, on the subject of the levy of court-fees in cases connected with the recovery of mesne profits. Mr. Charles considers it anomalous that regular appeals from orders assessing the amount of mesne profits under clauses (a) and (b), section 244, Civil Procedure Code, are treated, under the Notification issued by the Financial Department of the Government of India, No. 3967, dated 22nd November 1879, which has been reproduced in clause (6) of a Notification issued by that Department, No. 4650, dated 10th September 1889, as appeals against mere miscellaneous orders and subject only to a nominal fee of 8 annas or R2, as the case may be, in accordance with article 11 of the second schedule to the Court Fees Act. He also points out that in the Shahabad District a plaintiff claiming a share in the possession of immovable property, together with mesne profits, does not, as a rule, enter in the plaint the amount of the profits, but if successful in obtaining the other relief, he files a petition for a decree generally for a large sum on account of mesne profits. As Mr. Charles considers that the language of section 11 of the Court Fees Act, in which plaints are given for the ascertainment of mesne profits, clearly pre-supposes the payment of some fee on account of mesne profits, he suggests that the plaintiff should be allowed to state in their plaints the sum claimed for the recovery of mesne profits accruing prior to the institution of their suit.

With reference to the court-fees leviable on appeals of the kind above, it may be observed that, under section 583 of the Code of 1877, orders under section 244 were appealable, provided they were made with appeals, and appeals from them were chargeable with court-fees under the Court Fees Act, Schedule II. By section 90 of the Code of 1877, the list of appealable orders was amended, and the term "decrees" was introduced. The definition of the term "decrees" and the new definition in section 2 of the Code of 1882, as to declare "an order" to be a "decree," and such orders thus became appealable. An incidental result of this last amendment was that orders of this nature chargeable with court-fees at the same rates as appeals from ordinary decrees (Act VII of 1870, article 1). The Notification of the 22nd November 1879 was issued on a representation from the High Court, Calcutta, based on the ground that this result was not intended, because "it would manifestly be unjust

"to charge the *ad valorem* duty again and again in the same case for the decision of every question which might arise in execution between the decree-holder and the judgment-debtor." The Government of India have no doubt that this representation, as far as it goes, is well-founded and that it was never intended to make the decree-holder liable for more than one *ad valorem* fee, but they would be glad to learn whether the difficulty referred to by Mr. Charles has arisen in the *Madras Presidency* and, if so, how it has been dealt with, and how the *Governor in Council and the High Court*

would recommend that it should be dealt with in the future.

3. The practice of omitting to state in the plaint the amount claimed as mesne profits, and then filing in execution of a decree a petition with a court-fee stamp of 8 annas, applying for a large sum of mesne profits, leads to a difficulty in enforcing the provisions of the second clause of section 11 of the Court Fees Act. That clause requires that where the amount of mesne profits is left to be ascertained in the course of the execution of the decree, if the profits so ascertained exceed the profits claimed, further execution shall be stayed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. In cases of the nature of that mentioned by Mr. Charles, the plaintiff does not claim in his plaint any particular amount of mesne profits, and it is not clear how the mesne profits found during execution to be due can be said to exceed the amount claimed when no amount has been stated. It has been suggested that the second clause of section 11 of the Act should be modified by making the additional fee payable when the profits ascertained exceed the amount covered by the fee already paid in respect of mesne profits, irrespective of the amount claimed. Before further considering the matter, the Government of India will be glad to be favoured with a letter from the *Madras Presidency* on this point also.

I have the honour to acknowledge the receipt of your letter of the 22nd inst.

Yours obedient servant,

Secretary to the Government of India.

No. 3015 J., dated Calcutta, the 5th August 1891.

From—Sir JOHN EDGAR, K.C.I.E., C.S.I., Chief Secretary to the Government of Bengal, Judicial Department.

To—The Secretary to the Government of India, Home Department.

THE District Judge of Shahabad recently drew the attention of this Government to the notification of the Government of India, No. 3967, of the 22nd November 1879, making regular appeals in cases relating to mesne profits subject to a nominal fee prescribed in Article 11, Schedule II of the Court Fees Act, and observed that when issuing the notification it could scarcely have been the intention of the Supreme Government that such appeals should be exempted from payment of the usual *ad valorem* fees. It has been pointed out to the District Judge that although the notification of the 22nd November 1879 was superseded by the Financial Department notification of the 10th September 1889, No. 4650, the latter notification did not practically alter the previous one, and that a change in the wording of the notification of the 10th September 1889 would be necessary to enforce the payment of *ad valorem* fees in appeal cases relating to mesne profits.

2. I am now to forward to the Government of India a copy of the District Judge's letter, together with a copy of the reply thereto, for consideration and orders if necessary.

No. 731, dated Arrah, the 3rd September 1890.

From—J. G. CHARLES, Esq., C.S., District Judge of Shahabad.

To—The Chief Secretary to the Government of Bengal, Calcutta.

I have the honour to invite your attention to Notification No. 3967 published at page 747 of the *Gazette of India*, under date the 22nd of November 1879, which has had an effect which I do not think can have been intended by the Government.

2. Under section 2 of the Code of Civil Procedure a decree includes orders passed by a Court regarding the amount of mesne profits assessed under clauses (a) and (b), section 244 of the same Code, and a regular appeal lies from such decrees under section 540, Civil Procedure Code, on which an *ad valorem* fee would be payable under Schedule I of the Court Fees Act, VII of 1870. In such cases, where the amount of mesne profits claimed or decreed is large, the fee payable under the Act on appeal is considerable, and in most cases of this nature there is a keen contest, and the time of the highest judicial officers is often occupied for days together in the decision of such cases, and yet under the orders of the Government of India above quoted, such regular appeals are treated as miscellaneous orders subject to a nominal fee of eight annas or two rupees, as the case may be, under Article 11, Schedule II of the Court Fees Act.

3. Under Section 11 of Act VII of 1870 (Court Fees Act), minute directions are given for the ascertainment of the amount of the fee payable in cases in the Court of First Instance, and there appears therefore to be no reason why contentious regular appeals preferred in such cases should be exempted from payment of the usual *ad valorem* Court fees, while under the notification above quoted they are treated as miscellaneous orders.

4. In connection with the Court Fees Act, I also find that the ordinary practice in this Court is for plaintiffs to claim a declaration of title and possession of immovable property, with mesne profits for a period of dispossession, without entering in the plaint the amount claimed on account of mesne profits, so as to avoid the initial payment of any Court fees in this account.

If wholly or partially successful in obtaining the other reliefs claimed in the plaint, and after awaiting the result of one or more appeals, the plaintiff files a petition with a Court fee stamp of the value of eight annas only, applying generally for a fanciful and absurd amount of mesne profits, and under the existing law, it seems to be doubtful in such cases whether the payment of Court fees on the actual claim for mesne profits can be enforced if the sum claimed is not mentioned except in the Execution Decree.

5. If the profits ascertained by the Court exceed the profits claimed, section 11 of the Court Fees Act of 1870 provides that the further execution of the decree shall be stayed until the difference between the "fee actually paid" and the fee which would have been payable had the suit comprised the whole of the profits so ascertained, is paid. The language used in this section clearly presupposes the payment of some fee in the plaint on account of mesne profits, and if plaintiffs were compelled to state in their plaints the sum claimed by them on account of mesne profits accruing prior to the institution of their suits, and to pay Court fees on such claims, the practice would tend not only to benefit the Government revenue, but would also exercise an important check upon exorbitant and fanciful claims, which are too often supported by false and perjured witnesses.



Judicial Dept.
Y.O. 19/12/79 No. 3223-jud

From

G. D.

Referred to the
Hon. the Judges of the
High Court for favor
of remarks.

(By Order)

27.12.91

CHIEF SECRETARY
11 DEC 91
RECD GOVERNMENT

Under Secretary

27.12.91

19 Dec 1602

23 Dec 91 No 2007
Letter from the G. of D.
to the Hon. the
Judges of the High Court for
favor of remarks.

4.12.91

20.12.91

Re: Copy of Court fees
in cases connected with the
recovery of minor profits.

RECEIVED
20 DEC 91
IN M.S.

READ AGAIN ORDER OF GOVERNMENT, DATED
18, No. , MISCELLANEOUS.

ENCLOSURE

CURRENT No.

STATEMENT

ORDER OF GOVERNMENT

LETTER OF GOVERNMENT

STATEMENT WITH DETAIL

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IN ORIGINAL

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FURTHER PAPER, No. 1956/92 = 1006/7 No. 18

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ORDINARY, MS.

Judicial DEPARTMENT.
 G.O., DATED 23-12-91
 No. 207

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