

THE INDIAN LAW REPORTS. [VOL. VI.]
 APPELLATE CIVIL.

Before Mr. Justice Melvill.

1882
 January 10.

MOTIGAVRI (ORIGINAL PLAINTIFF), APPELLANT, v. PRANJIVANDAS
 AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.

*Court Fees Act VII of 1870—Memorandum of appeal—Stamp—Suit for recovery
 of land and money.*

In deciding the amount of stamps to be borne by the memorandum of appeal, the High Court is not bound by the decision of the Court of first instance as to the stamp on the plaint.

THIS was a reference, under section 5 of the Court Fees Act VII of 1870, by the Taxing Officer of the High Court, Appellate Side.

The defendant No. 1 had, in a suit against the plaintiff, obtained a decree for Rs. 7,595, and in execution of this decree certain property had been sold to defendants Nos. 2 and 3. The plaintiff has brought this action to recover this property and the sum of Rs. 1,417-2-8, being the profits derived therefrom by the defendants Nos. 2 and 3, and also mesne profits until recovery of possession, or, failing this, to recover Rs. 3,300 from the first defendant, being the amount realized by him by the sale of the property, on the ground that the former decree against her was null and void, she having been a minor and not properly represented in the suit.

Plaintiff stamped her claim as in a suit for Rs. 4,747. The Subordinate Judge held that the suit was virtually to set aside a decree for Rs. 7,595, and was, therefore, insufficiently stamped, and on this and other grounds dismissed it.

Plaintiff appealed and stamped her appeal to the same amount as she had stamped her plaint. The District Judge thereupon dismissed the appeal, on the ground that the Court of first instance having decided what the stamp duty was, he was precluded by section 12 of the Court Fees Act (VII of 1870) from re-opening the question, and he, therefore, held that the appeal was understamped.

The plaintiff appealed to the High Court, and stamped this second appeal as she stamped the plaint and first appeal.

The questions referred by the Taxing Officer for decision were—

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Whether, when the Court below had decided that a certain stamp was payable on the plaint, the Appellate Court was bound to accept its valuation as the basis on which the appeal is to be valued?

What was the correct valuation of this appeal?

The Taxing Officer's opinion was that, in valuing the appeal, he was not bound to follow the valuation put on the plaint by the Court below; that in this case the plaint had been overvalued, as the suit was one for possession of land and mesne profits; and that, as regards the alternative relief sought, the larger of the two reliefs must determine the amount of the stamp.

The Chief Justice having referred the question to Mr. Justice Melvill for disposal, his Lordship delivered the following:—

MELVILL, J.—The Court is of opinion that, in deciding the amount of stamp to be borne by the memorandum of appeal, this Court is not bound by the decision of the Court of first instance as to the stamp on the plaint. The Court is also of opinion that the Registrar and Taxing Officer is right in holding that the appeal ought to be stamped as in a suit for the recovery of land and money, and that, as regards the alternative relief sought, the larger of the two reliefs sought must determine the amount of the stamp. This decision will be final as determining the stamp on the memorandum of second appeal; but it will not preclude the Division Bench, before which the appeal may come, from determining (contrary to the *ex-parte* decision now passed by the Court), that the lower Appellate Court was right in holding itself bound by the decision of the Court of first instance on the question of stamp.
