

(21)

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Kemball.

BHOGILAL, PLAINTIFF, v. POPATBHAI, DEFENDANT.*

1882
December 21.

Stamp—The Indian Contract Act (IX of 1872), Sec. 265—Plaint—Court Fees Act (VII of 1870), Sec. 7, Cl. iv (f)—Suit for accounts.

The stamp duty payable on an application to the District Court under section 265 of the Indian Contract Act (IX of 1872) for an account and winding up of partnership should be an *ad-valorem* fee under section 7, cl. iv (f) of the Court Fees Act (VII of 1870).

THE following case was stated for the orders of the High Court by S. H. Phillpotts, Judge of the District of Ahmedabad:—

“The plaintiff in this case has sued for an account and winding up of a partnership under section 265 of the Indian Contract Act. He estimates the amount due to him at Rs. 1,400, but has filed this suit on a ten-rupee stamp. I am of opinion that the plaint should bear a stamp of 95 rupees, *viz.*, the amount at which the claim is estimated, as the reasons on which the High Court in the case of *Ladubhai Premchand v. Revichand Venichand* (1) decided that the court fee should be leviable on the amount at which the plaintiff values his claim in appeal, apply equally to an original suit. I, therefore, refer this question, at the request of the plaintiff's pleader, to the High Court, as it appears that in the case of *Dayachand Nemchand v. Hemchand Dharamchand* (2) a similar reference was heard and decided by the Full Bench of the Bombay High Court. Subject to the decision of the High Court in this reference, I order that the plaintiff do supply the deficient court fee, Rs. 85, within three months.”

There was no appearance on behalf of either party in the High Court.

SARGENT, C. J.—As the plaintiff has sought the relief contemplated by section 265 of the Contract Act (IX of 1872) by suit, he must pay the *ad-valorem* court fees stamp required by a suit for accounts under section 7, cl. iv. (f) of Act VII of 1870.

NOTE.—See *Ladubhai Premchand v. Revichand Venichand* (I. L. R., 6 Bom. 143) as to the stamp in appeal.

* Civil Reference, No. 54 of 1882.

(1) I. L. R., 6 Bom., 143.

(2) I. L. R., 4 Bom., 515.