

The
Court-Fees Act
&
Suits Valuation Act

Third Edition
2001

DLR

The
Court-Fees Act
[VII of 1870]
&
Suits Valuation Act
[VII of 1887]

Third Edition
2001

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Preface to 3rd edition

It is heartening to note that by the grace of Almighty Allah Pak, DLR is going to publish an important publication entitled "The Court-fees Act" (Act No.VII of 1870) and Suits Valuation Act (VII of 1887). The second edition was published on 11-03-1989. Because of demand due to popularity of the publication, the entire stock has been exhausted long before. Although there has been enormous pressure and persistent demand for having upto date publication from our valued customers, we could not meet the demand for obvious reasons. However, though late DLR has ventured to publish the third edition to fulfil the solemn wishes of our patrons & subscribers. The Court-fees & the Suits Valuation Act are essential for preparing a case. The court-fee rate is ever changing, depending upon the decision of government for fixing fees and the rate which is published through Finance Acts. Other than the fees and rate, no significant changes in the text are forthcoming.

Further, it is heartening to note that we have endeavoured to insert the up to date case laws, appearing in the DLR, BLC, BLD, MLR, PLD & AIR.

DLR will be deeply grateful to our valued patrons & readers, if the publication proves useful to them. We have tried our best to make the publication free from errors as far as possible. This edition is presented with the full confidence that the publication will continue to maintain its standard in the field of legal journalism.

We express our sincere thanks to MA Sattar, M Com LLB, Advocate Supreme Court, and Rahmatullah Sarker, Advocate, Supreme Court for compilation and scrutinising the publication.

Thanks are also due to the printing staff, especially Kamal Hossain, Computer-in-Charge who have rendered immense services in bringing out the publication in a record time.

Errors and omissions, if any, pointed out by our learned readers will be very much appreciated.

With thanks

Dhaka
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Preface to 2nd edition

The present edition of Court-fees Act and the Suits Valuation Act, to enhance their value for reference purposes, contain the judicial decisions of the last quarter of a century (in Pakistan) beginning with 1949 to date. A number of pre-Partition Indian decisions have also been added, particularly in the Suits Valuation Act. No comments or notes have been given. The aim has been to present an edition to the lawyers for ready professional purposes. The bulk of the book is made small to keep down the price. It is noteworthy to point out the price of different commodities, specially the paper, is steadily rising.

It is intended to bring out a series of important Enactments which are indispensable for the lawyers. Since there is a great scarcity of law books in the country, it is hoped that with the publication of these books the situation will be to some extent relieved.

Dhaka
March, 1989

Publisher

The
Court-fees Act
[VII of 1870]
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Suits Valuation Act

[VII of 1887]

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The
Court-fees Act¹
(Act VII of 1870)

[11th March, 1870]

Chapter I
Preliminary

1. **Short title**—This Act may be called the Court-fees Act 1870.

Extent of Act—It extends to ²[the whole of ³[Bangladesh];

Commencement of Act—And it shall come into force on the first day of April, 1870.

4* * * * * *

Case-Law

High Court Rules—Provisions like section 122, CPC, which empower courts to make rules to regulate procedure, enable them to levy Court-fees, as the power to regulate procedure includes the power to impose fees in Courts. *AIR 1922 Mad. 421=45 Mad 849+AIR 1935 Rang 460=13 Rang 156*

1. For the Statement of Objects and Reasons, see Gazette of India, 1869, Pt V p 57 and for Proceedings in Council, see *ibid.*, 1869, Supplement, pp 1179 and 1452; *ibid.*, 1870, Supplement, pp 52, 378, 421, 427 and 434.

Act VII of 1870 has been declared in force in the Chittagong Hill-tracts by notification under section 4(2) of the Chittagong Hill-tracts Regulation, 1900 (1 of 1900), see notification No. 5702-Ex., dated the 11th April, 1927, Calcutta Gazette, 1927, Pt. I, p 844.

This Act, as amended from time to time, was applied to the district of Sylhet by East Bengal Act XV of 1949.

2. The words within square brackets were substituted for the words "all the Provinces and the Capital of the Federation" by the Central Laws (Statute Reform) Ordinance, 1960 (Ordinance XXI of 1960), First Schedule.

3. This word was substituted for the word "Pakistan" by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973), section 3 and 2nd Schedule (with effect from 26-3-71).

4. Section 1A was omitted, *ibid.*

Section 1—The Act has no preamble and it is for the Judges to determine from the enacting clauses what its objects were. *12 All 129 (FB)*.

Section 1—Court-fee is a State debt. *AIR 1925 Mad 433 + AIR 1936 Mad 602=Mad 872+33 Cal. 1040*. The Court-fees Act was passed not to arm a litigant with a weapon of technicality against his opponent, but to secure revenue for the benefit of the State. *AIR 1918 PC 188=46 Ind App 24+AIR 1955 Cal 258(DB)*.

Section 1—Government is liable to pay Court-fee—The Government has to pay court-fees as much as any other party. *25 Mad 457(DB)*.

Section 1—Forum for suit—The Act has nothing to do with the question in what Court a proceeding should be instituted. *AIR 1932 All 413 (DB)*.

Section 1—The Act must be strictly construed and unless liability for a fee is clear from the language of the Act, it must be held that such liability does not exist. *PLD 1966 Karachi 42+PLD1965 Kar 686+AIR 1928 Lah. 113(DB)*. In other words the Act is to be construed in favour of the subjects. *PLD 1965 Lah. 686*.

Section 1—A Court of law is not called upon to constitute, itself an over-zealous collector of public revenue. The Court is not permitted to travel beyond the limits of law and to devise novel methods of collecting Court-fees not authorised by law. *16 DLR 307=PLR 1964 Dacca 782(DB)*. The Act is not to be used to coerce the subject. Rather, it should always be construed in favour of a subject as far as possible like any other enactment that imposes a burden on the subject and even the provisions of Civil Procedure Code should not be applied in a way as to deprive a litigant of his substantive right on technical grounds. *NLR 1980 SCJ 293=1980 CLC 1124*.

Section 1—To ascertain whether two constructions are equally possible the ordinary rules of construction of statutes are to be applied. *AIR 1924 Mad 420=47 Mad 262 (FB)*.

Section 1—In Court-fees matters there is no power to apply analogies. *AIR 1956 Mad 179*.

Section 1—Where any provision is ambiguous, an interpretation which has been uniformly followed for a long time is to be applied. *34 Cal 954 (FB)*.

Section 1—A subject is entitled, if he can, in any legal manner, to circumvent the incidence of a taxing Act. *AIR 1928 Mad 929 (DB)*.

Section 1—Special provision in Act—A special provision in the Act is to be regarded as the one applicable to a case rather than one which is of more general nature. *AIR 1932 Mad 605*.

Section 1—Retrospective effect—The Court-fee payable on a plaint is to be determined with reference to the law in force at the time of the institution of the suit although the law in force at the time of accrual of the cause of action might be different. *25 Mad L Jour 205(DB)+AIR 1958 Andh Pra 267*. The rules stated above apply also to other proceedings. *1936-43 Tax Dec 100(Nag)*.

Section 1—Plaint returned for presentation to other Court—Where a plaint has been returned for presentation to proper Court, it is only the date of its presentation in the proper Court that would determine the question of court-fee. *AIR 1963 AP 68*.

Section 1—A change in the law of court-fee pending an application for probate will affect the court-fee payable on the probate. *AIR 1927 Bom 643 (DB)*.

Section 1—Where court-fee has been paid according to a certain practice which is subsequently authoritatively declared to be erroneous, during the pendency of the suit, the Court will be entitled to levy additional court-fee that would be due under the new ruling. *AIR 1920 Pat 592(DB)*.

Section 1—Appeal in the matter of Court-fee—Where a subsequent enactment confers upon a party a right of appeal against an order relating to court-fees which he had not under the previous law, he can exercise the right of appeal even if his suit was filed before the enactment. *AIR 1941 All 298*.

Section 1—Constitutional petitions—A constitutional proceeding is an independent original proceeding and not a continuation of any previous proceeding and therefore no question of any vested right can arise in respect of court-fee payable on a constitutional petition. *AIR 1958 Andh Pra 267*.

Chapter II

¹Fees payable in Courts and in public offices

3. Levy of fees in the High Court Division on their original sides—The fees payable for the time being to the clerks and officers (other than the sheriffs and attorneys) of the ²[High Court Division];

or chargeable ³ * * * * * under No. 11 of the first, and Nos. 7, 12, 14 ⁴*, 20 and 21 of the second schedule to this Act annexed;

⁵ * * * * *

shall be collected in manner hereinafter appearing.

Case-Law

Sections 3 and 4 are the charging sections and the Schedules simply provide the rates, etc but liability is created under those sections alone. No amount of alteration in the Schedule will make a document liable to court-fee, if it fails to be attracted by these sections. *AIR 1960 all 179.*

Section 3—Court-fees on original side of High Courts—In regard to the ordinary original jurisdiction of a High Court the fees prescribed by this Act are not applicable except in certain specified cases. *PLD 1975 Kar 944+PLD 1980 Kar. 492+AIR 1935 Rang 460+AIR 1922 Mad 421.*

1. This heading was substituted for the original heading "Fees in the High Courts and in the Courts of Small Causes at the Presidency towns" by section 4 of the Court-fees (Bengal Amendment) Act, 1935 (Bengal Act VII of 1935)

2. The words within square brackets were substituted for the words "High Courts" by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973), section 3 and 2nd Schedule (with effect from 26-3-71).

3. The words "in each of such Courts" were omitted, *ibid.*

4. The figure "16" which was repealed by the Amending Act, 1891 (XII of 1891), is omitted.

5. The words and commas "and the fees for the time being chargeable in the Courts of Small Causes at the Presidency towns, and their several offices," were omitted by GGO 4 of 1949.

4. Fees on documents filed, etc, in the High Court Division in their extraordinary jurisdiction—No document of any of the kinds specified in the first or second schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited or recorded in, or shall be received or furnished by, ¹[the High Court Division] in any case coming before such Court in the exercise of its extra-ordinary original civil jurisdiction; or in the exercise of its extra-ordinary original criminal jurisdiction.

In their appellate jurisdiction—or in the exercise of its jurisdiction as regards appeals from the ²[judgments (other than judgments passed in the exercise of the ordinary original civil jurisdiction of the Court) of one] or more judges of the said Court, or of a Division Court;

Or in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence;

As Courts of reference and revision—or in the exercise of its jurisdiction as a Court of reference or revision;

unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

Case-Law

Object of the Act—Fiscal. The main object of the Court-fees Act is to secure revenue for the benefit of the State. It prescribes the fees which are to be paid in respect of documents to be used in Courts, how the fees to be paid thereon are to be ascertained and how the sufficiency of such fees are to be determined. It is thus, in every sense of the term, a fiscal enactment. *Momtaz Mallik vs Taxing Officer*, 20 DLR 599.

Section 4—The Court-fees Act makes no provision for the charge of fees in respect of matters brought before a High Court for the exercise of its ordinary original civil jurisdiction.

1. Subs by Act VIII of 1973, section 2 & 2nd Schedule for "any of the High Courts."

2. These words and brackets were substituted for the words "judgment of two" by section 2 of the Court-fees (Amendment) Act 1922 (XIX of 1922).

Held: Where in matters arising before a High Court no fee has been fixed, there is given by Article 101 and by the Letters Patent a power to regulate the practice of the High Court, which has for great many years been interpreted to include the power to fix court-fees payable in such matters.

While regretting that so great an increase in the fee was not allowed to be dealt with by the Legislature, whose power in this respect is superior, and is exercisable on wider grounds than those appropriate to the High Court, still the decision of High Court that the rule in question is *intra vires* and legal is correct.

The fee which is here called in question is a fixed fee, and it is a noticeable point that it is five times as high as the highest fee fixed for a proceeding in the High Court by the Court-fees Act. *Ahmed Khan vs Chief Justice*. 20 DLR (SC) 235.

Section 4—Delay in filing memorandum of appeal—Delay in filing memorandum of appeal cannot be condoned on ground of poverty. Discretion for condoning delay in filing memorandum of appeal cannot be exercised being contrary to the provisions of section 4 of the Court-fees Act. *Maminuddin Chowdhury vs Wazuddin Goura*. 9 DLR 188.

“Case”—meaning of—The word “case” must be confined to judicial or quasi-judicial cases as opposed to transactions. 1912 Pun IR No. 202, p 647(FB).

Section 4—Income tax reference. No Court-fee is payable under this Act in respect of a reference under section 66 of the Income-tax Act. *AIR 1933 Sind 148=47 Sind LR 243(DB)*.

Section 4—The High Court has no statutory or inherent jurisdiction to make any order either for refund of Court-fees or for the issue of a certificate for such refund in the case of a suit transferred to the Court in its Extraordinary Original Civil Jurisdiction under clause 13 of Letters Patent. *AIR 1955 Cal 52*.

Section 4—An opportunity to make up deficiency in Court-fee—is normally allowed where deficiency was due to bona fide mistake of the counsel and was not deliberate. *PLD 1966 Pesh. 51+PLD 1963 Pesh. 182(DB)*. An opportunity for making up of Court-fee under this section cannot be claimed by a party as a matter of right. It is the discretion of the Court to allow or not to allow such request. *PLD 1970 Kar. 295(DB)*.

Section 4—Deficiency not made good-effect—So long as the deficiency has not been made good, there is no memo of appeal before the Court and therefore the appeal has not been filed. There is before the Court merely a defective document on the basis of which, after the defect has been removed an appeal might come into existence. *PLD 1972 Karachi 103(DB) +AIR 1964 Allahabad 552 (FB)*.

5. Procedure in case of difference as to necessity or amount of fee—When any difference arises between the officer whose duty it is to see that any fee is paid under this chapter and any suitor or attorney, as to the necessity of paying a fee or the amount thereof, the question shall, when the difference arises in ¹[the High Court Division], be referred to the Taxing-Officer, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the ²[Chief Justice of Supreme Court], or of ³[such Judge of the Supreme Court] as the Chief Justice shall appoint either generally or specially in this behalf.

⁴* * * * *

The Chief Justice shall declare who shall be Taxing Officer within the meaning of the first paragraph of this section.

Case-Law

Taxing Officer's decision about Court-fees—on memorandum of appeals to High Court is final. About plaint he had no such authority. *Bejoy Kumar Sarnakar vs Governor General of Pakistan 6 DLR 289*.

1. The words within square brackets were substituted for the words "any of the High Courts" by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973), section 3 and 2nd Schedule (with effect from 26-3-71).

2. These words were substituted for the words "Chief Justices of such High Court" by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973), section 3 and 2nd Schedule (with effect from 26-3-71).

3. The words within square brackets were substituted for the words "such Judge of the High Court," Ibid.

4. The whole of the second paragraph of section 5 was omitted by the Central Laws (Statute Reform) Ordinance, 1960 (Ordinance XXI of 1960).

Section 5—Taxing Officer acting under section 5 of the Court-fees Act does not perform the function of the High Court within the meaning of Article 98(5) of the Constitution, read with Articles 242 and 91.

Held: The “High Court” means and has always meant the Chief Justice and the Judges of the High Court. The meaning to be given to the words “High Court” in sub-Art (5) of Art, 98 must, therefore, be that which has been provided by the Constitution itself in Article 242 read with the provisions of Article 91. It cannot therefore be held as has been done by the High Court that Registrar when acting as a Taxing Officer under section 5 of the Court-fees Act is a Court itself within the meaning of sub-article (5) of Article 98 of the Constitution. *Mamtaz Malik vs Taxing Officer 19 DLR(SC) 1.*

Section 5—Taxing Officer under section 5 is not necessarily an Officer of the High Court—Under section 5 of the Court-fees Act though the Chief Justice of the High Court is empowered to declare as to who shall be the Taxing Officer there is nothing therein which requires that he must necessarily be an officer of the High Court itself. All that can therefore be said that the Taxing Officer is a statutory *persona designata* nominated by the Chief Justice of the High Court. *Mamtaz Malik vs Taxing Officer 19 DLR (SC) 1.*

Section 5—Function of the Taxing Officer under the section—He is merely an officer nominated under the law to determine the question referred to him under the section—The Taxing Officer under this section is not even a Court and certainly not an officer to whom the High Court can be said to have delegated any of its functions. for, the Court-fees Act does not say that the High Court or such officer as may be appointed in that behalf by the High Court shall, in the event of any difference arising between the Stamp Reporter and any suitor, refer the question to the High Court. The Taxing Officer, is therefore, clearly an officer nominated by the statute to determine a particular class of questions, and in doing so, he does not act as a deputy for a Judge or a Bench of the High Court before which the case is to come up for hearing.

Functions under the Court-fees—Act are not assigned to him under the Rules of the Court. In this view of the matter the High Court was wrong in taking the view that the order of the Registrar under the Court-fees Act was an order of the High Court itself so as to make a petition under Article 98 of the Constitution challenging his order as not maintainable. *Momtaz Malik vs Taxing Officer 19 DLR (SC) 1.*

Section 5—Relief claimed, Taxing Officer cannot question—

Under this section a Taxing Officer must decide the question of Court-fee with reference to the plaint or memorandum of appeal as presented. He cannot say that a particular relief is not necessary. (90) 12 All 129(FB) (One of the two declarations sufficient).

Section 5—Powers of Taxing Officer after admission of appeal—

A Taxing Officer has jurisdiction to decide whether he has power under this section to demand additional Court-fee on an appeal after the appeal has been admitted. AIR 1943 Pat. 102=21 Pat. 720.

Section 5—Where once the question of Court-fee on an appeal has been decided by the Taxing Officer, it cannot be reopened at the hearing of the appeal before the Court or at the time of its admission. AIR 1920 Pat. 593=4 Pat. L Jour 700 700(DB).

Section 5—Decision must be on merits—In order to be final under this section, the decision of the Taxing Officer must be one on the merits after parties have been heard. AIR 1934 All 56(DB), (Refusal to consider on ground of delay).

Section 5—Taxing Judge—The Chief Justice has the power to appoint a Taxing Judge, under this section. AIR 1923 Mad. 362=46 Mad. 592.

Section 5—Form for appointment—The section does not prescribe any form in which the order of the Chief Justice appointing a Judge or constituting a Bench to hear a matter should be passed. The order might be a general or special one. It might be written or even oral. AIR 1957 All 207 (DB).

Section 5—Finality of decision—The decision of the Taxing Judge under this section is not liable to be set aside in appeal, revision or reference. 1903 All WN 214+AIR 1958 SC 245.

Section 5—The Judge to whom the question has been referred can refer to a Full Bench any question of law which may be involved and dispose of the reference in accordance with the opinion of the Full Bench. AIR 1932 All 485=54 All 812 (FB).

Section 5—The Taxing Officer must see that the appellant does not escape liability by vague and indefinite statements of facts or by adopting

such expedients, as for instance bringing essentially a title suit in the guise of a partition suit. *AIR 1943 Pat 102=21 Pat. 720.*

Section 5—The Taxing Officer or Taxing Judge has no power to dispose of a proceeding if the requisite Court-fee is not paid. If the fee is not paid as required, the matter must be laid before the Court for orders. *AIR 1925 Pat.392 (FB)+24 Suth WR 258 (DB).*

Section 5—Who may raise objection. An objection as to Court-fee can be taken by the respondent to the appeal. *AIR 1925 All 787 (DB).*

16. ¹[(1)] Fees on documents filed, etc, in Mufassil Courts or in public offices—Except in the Courts hereinbefore mentioned no document of any of the kinds specified as chargeable in the first or second schedule to this Act annexed shall be filed exhibited or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there ²[has been paid] a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

³[(2)] Notwithstanding anything contained in sub-section (1) or in any other Act, a Court may receive a plaint or memorandum of appeal in respect of which an insufficient fee has been paid, ⁴[Subject to the condition that the plaint or memorandum of appeal shall be rejected unless the plaintiff or appellant, as the case may be, pays to the Court within a time to be fixed by the Courts such reasonable sum on account of Court fees as the Court may direct.]

1. Section 6 was transferred from Chapter III and inserted after section 5 in Chapter II and was renumbered as sub-section (1) of section 6 by Section 6(1) of the Court-fees (Bengal Amendment) Act, 1935 (Bengal Act VII or 1935).

2. These words were substituted for the words "be paid", *ibid.*

3. Sub-section (2) was added by section 6(2), *ibid.*

4. The words were substituted for the original words by section 2 of the Court-fees (Bengal Third Amendment) Act, 1935 (Bengal Act I of 1936).

Case-Law

Section 6—Rejection of plaint when operates as a decree—A plaint can be rejected for non-payment of deficit Court-fee both under Order 7, rule 11 of the Code of Civil Procedure as well as under section 6 of the Court-fees Act. If the rejection of plaint goes so far as to determine the question between the parties, then it will operate as a decree: *Farman Ali Dewan vs Munsur Ali* 13 DLR 836.

Section 6(2)—The enlargement of time contemplated under section 148 of the Code of Civil Procedure and under section 6(2) of the Court-fees Act has no application in the instant case where the statute fixed the period of time which a court can give for compliance, imposing a positive bar against granting time exceeding 21 days as provided under rule 11 Order VII of the Code. *Abdul Aziz vs Tafazzal Hossain and another* 50 DLR 487.

Section 6(2)—An appellate Court is perfectly within its power to direct the appellant to pay deficit Court-fees within the time fixed by it and in default to reject the appeal. *Dist. Primary Edn. Officer vs Joynal Abedin* 40 DLR 328.

Section 6(2)—Where there is inconsistency between the heading of a chapter and a section therein, the latter is to prevail. *AIR 1925 All 787=47 All 756 (DB)*.

Section 6(2)—Scope and applicability—This section does not make provisions with regard to High Courts. *AIR 1928 Sind 87=23 Sind LR 91 (DB)*.

Section 6(2)—An oral application to the Court, where such is allowed, does not require any Court-fee under this section. *2 NWPHCR 418 (DB)*. Similarly applications not required by the Civil Procedure Code to be in writing do not fall within the scope of this section. *2 NWPHCR 418 (DB)*.

Section 6(2)—No Court-fee is necessary on an application by a witness for return of documents filed by him in obedience to a summons, *15 Suth WR 237 (SB)* or on a claim filed by a creditor against the estate of a deceased in pursuance of a public notice inviting such claims, in an administration suit, after a preliminary decree for administration has been passed. *AIR 1931 Mad. 683=55 Mad. 626 (DB)*.

Section 6(2)—Government to pay Court-fees—The Government is bound to pay court-fees like any other litigant in suits filed by the

Government and, if successful, can recover the same as costs. *25 Mad. 457 (DB)*.

Section 6(2)—A written statement, *12 Cal. LR 367 (DB)* or a memorandum of objections filed under Order 41, Rule 26 of the Civil Procedure Code in regard to findings as returned by the lower Court on remand is not covered by this section. *AIR 1936 Oudh 180 (DB)*.

Section 6(2)—Failure to pay the prescribed court-fees on a plaint will not affect jurisdiction of the Court to entertain the suit. *AIR 1918 PC 188=46 India App. 24*. The Court may entertain the suit and enlarge the time fixed by it for payment of deficit Court-fee, from time to time. *AIR 1928 Lahore 274*. But this is a matter in the discretion of the Court and a party cannot claim extension of time as a matter of right. *AIR 1936 Pat. 310 (DB)+AIR 1938 Mad. 542*.

Section 6(2)—Plaint containing separate reliefs—Where a plaint contains two or more independent reliefs on which Court-fee is payable separately and the Court-fee is paid on only one of them, the plaint as a whole will be deemed to have been written and filed upon paper insufficiently stamped, within the meaning of the provisions of Order 7, Rule 11(c) of the Civil Procedure Code and the Court is bound to grant some time to the plaintiff to pay deficit Court-fee. The Court in such a case has no authority to reject the plaint with respect to any relief on which no Court-fee has been paid. It is only after affording an opportunity to the plaintiff to make good the deficit by a given time that the Court can disallow a relief, if the necessary Court-fee is not paid by the given date. *AIR 1962 Patna 189*.

Section 6(2)—Stage at which plaint should be rejected—The Court has power to determine the correct amount of Court-fee payable in a suit and such determination should be resorted to at the initial stage in order to avoid anomalies. Otherwise also a plaint or any other document without proper Court-fee stamp is not of any validity unless and until it is properly stamped. *PLD 1982 BJ 38*.

Section 6(2)—A party may either make good Court-fee or relinquish a portion of the claim in order to bring it within the Court-fees paid. *AIR 1948 East Punjab 30 (DB)+1946 Madras 126*.

Section 6(2)—Memorandum of appeal—Memo of appeal cannot be treated as properly presented so long as proper Court-fee is not paid *PLJ 1982 Karachi 235=NLR 1982 Civ. 111=NLR 1982 UC 66*.

Section 6(2)—The rejection of a memorandum of appeal by an appellate Court could not *ipso facto* disentitle the appellants from presenting a fresh memorandum of appeal with proper Court-fee if the same is otherwise in order. *1970 DLC 418=22 DLR 302.*

Section 6(2)—Where the proper Court-fee is not paid on memorandum of appeal, the Court may dismiss it even after entertaining it. *PLD 1932 Pesh.44.*

Section 6(2)—Valuation of suit—It is the duty of Court to enquire into the proper valuation of a suit when it has grounds to consider that the valuation given by the party is not correct. *AIR 1925 Patna 392 (FB)+AIR 1930 Calcutta 65 (DB).*

Section 6(2)—An opportunity must be given to a party to correct the valuation or to pay deficient Court-fee. A plaint cannot be rejected under this rule for undervaluation or for insufficiency of stamp unless the plaintiff is given an opportunity to correct the valuation or to supply deficient stamp, as the case may be, within a time to be fixed by the Court, and he fails to do so. *PLD 1959 Pesh. 120+AIR 1914 Lahore 268=1914 Punjab Re No. 35 (DB).*

Section 6(2)—Plaint falling under both schedules—Where a plaint is so worded that it falls under both schedules of the Act, in the sense that it can be so read that two reliefs, one falling under one schedule and the other under the other schedule can be said to have been claimed, the Court-fee to be paid is that payable on the relief which requires higher Court-fee. *AIR 1935 All 817=58 All 146(FB).*

Section 6(2)—Pre-emption cases—A person who comes forward to exercise a predatory right like the right of pre-emption should be very vigilant at every stage. If he did not make good deficiency in court-fee within limitation for the suit, extension of time should not be granted to him. *PLJ 1979 SC 108=PLD 1979 SC 821=NLR 1979 Civ. 500.*

Chapter III

Computation of fees¹

✓ 7. **Computation of fees payable in certain suits**—The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:

- ✓ i. **For money:** In suits for money (including suits for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically)—according to the amount claimed.

Case-Law

Section 7(General)—The section contemplates three modes of valuation of the subject-matter of a suit: (i) By valuing it according to its market-value (e.g. paras (iii), (iv), (d), (v), (e), etc), (ii). By ascribing to the subject-matter an artificial value based simply on certain fixed rules of calculation (e.g. para (v), clauses (a), (b), (c), and (iii) by requiring the plaintiff himself to value the relief he seeks (e.g. para (iv). *AIR 1939 Cal. 155=ILR (1938) 2 Cal. 411 (DB)*).

Section 7(i)—The section only applies where *ad valorem* fee is payable, *AIR 1946 All 392=ILR 1946 All 455 (DB)*. If a suit does not come under any of the categories mentioned in this section, the fees payable will be determined in accordance with such of the articles in the two schedules as may be applicable to the case. *AIR 1939 Rang. 375=1939 Rang. LR 474*.

Section 7(i)—Construction of plaint. In construing a plaint for purpose of court-fee, the Court must take into consideration the substance and not merely the form of the relief prayed for. *PLD 1970 Kar. 548+AIR 1927 Lah. 499=8 Lah. 531 (DB)*.

Section 7(i)—A relief not asked for cannot be imported so as to charge court-fee thereon. *AIR 1965 Pat. 486+AIR 1952 Pat. 60*.

1. This heading was substituted for the original heading "Fees in other Courts and in Public offices" by section 5 of the Court-fees (Bengal Amendment) Act, 1935 (Bengal Act VII of 1935).

Section 7(i)—Where the suit as framed is not maintainable but the plaintiff is found to have a cause of action on which he can seek relief by properly framing his suit, the Court may give the plaintiff an opportunity, if it thinks fit, to amend the plaint so as to make it sustainable in law. *AIR 1938 All 481=ILR 1938 All 470 (DB)+6 Sind LR 72 (DB)*.

Section 7(i)—**Value of subject-matter, Court may question estimate**—The Court concerned trying the suit or hearing an appeal has jurisdiction to determine the amount of any fees chargeable on the plaint or memorandum of appeal, as the case may be. *PLJ 1981 Lah. 181+PLJ 1979 Lah. 278=1979 CLC 578*.

Section 7(i)—**Value for Court-fee and jurisdiction—distinction**—In the absence of any special provisions, the question of Court-fees and that of valuation for jurisdiction purposes are distinct and fall to be decided separately under the respected enactments dealing with them. *18 Suth WR 109=12 Beng. LR 115(n) (DB)*.

Section 7(i)—**Under-valued appeal**— If an appellate Court finds that the suit has been under-valued it may direct payment of higher court-fee and pass a decree for an amount higher than that claimed. *PLD 1978 Pesh. 138 (DB) (But see 11 Ind. Cas 198 (DB) (Lah.)*.

Section 7(i)—**Court-fee on amendment of plaint**—Where a suit has been deliberately framed as one for mere declaration with a view to avoid paying higher court-fee, it can be allowed to be amended so as to include a prayer for consequential relief. *AIR 1924 Pat. 310=2 Pat. 919 (DB)+39 Cal. 704 (DB)*.

Section 7(i)—**Relinquishment of claim to bring proceedings within Court-fee**—Where *ad valorem* court-fee is payable on a plaint or a memorandum of appeal according to the amount or value of subject-matter but Court-fee paid is not sufficient, it is open to the plaintiff or appellant to relinquish part of the claim so as to bring his suit or appeal within the court-fee paid. *PLD 1971 Kar. 22+AIR 1927 Lah. 543+AIR 1939 Bom. 354 (DB)*.

Section 7(i)—**Court fee payable only on past mesne profits**—Future mesne profits need not be valued, since it is impossible to give an approximate statement of the account. *AIR 1953 Pat. 289+AIR 1946 Oudh 59 (DB)*.

Section 7(i)—**Appeal against final and preliminary decree**—Where appeals are filed against final and preliminary decrees in the same case and

full court-fee is paid on the appeal from final decree; no court-fee need be paid on an appeal from the preliminary decree. *AIR 1957 AP 16*.

Section 7(i)—Appeal by some of judgment-debtors—Where a decree for mesne profits is passed against a number of defendants jointly, if some of them alone appeal they must pay court-fee on the whole amount and not only on a portion of it which may be proportionate to the area of land in their occupation. *AIR 1933 Pat. 623=3 Pat. L Jour 101 (DB)*.

Section 7(i)—Second Appeal—On the memorandum of the second appeal ‘*ad valorem*’ fee had to be levied according to Schedule I of the Court-fee Act on the Additional amount claimed by the plaintiff as mesne profits from the date of suit to the date of institution of second appeal. For the mesne profits after the date of the institution of the second appeal no court-fee need be paid. *PLD 1962 Dacca 214=13 DLR 836+AIR 1955 Trav. Co. 176*.

Section 7(i)—Rent, suit for—Where a suit is for arrears of rent the mere fact that the court will have to decide the question of title will not alter character of the suit for the purposes of court-fees. Fees paid according to amount of rent claimed will be enough. 1893 Bom. *PJ 458 (DB)*.

Section 7(i)—Mortgage, suit on—A “suit for money” includes a suit for sale in enforcement of mortgage. *AIR 1931 Cal. 159=58 Cal. 829 (DB)+AIR 1931 Mad. 710*.

Section 7(i)—Two reliefs claimed—Where a plaintiff in a suit on a mortgage seeks a decree for sale of the mortgaged property and also a money decree, the former relief falls under para (iv) (c) of this section and the latter relief under this paragraph. (‘76) 1876 Oudh SC No. 34.

Section 7(i)—Mortgage decree, appeal against—Where a defendant appeals against a decree in favour of the plaintiff in a mortgage suit, Court-fee will be payable under this paragraph according to the amount of the decree. *AIR 1927 Sind 251=23 Sind LR 277 (DB)*.

Section 7(i)—Preliminary and final decree—appeal against—On an appeal from final decree in a mortgage suit, *ad valorem* court-fee is payable according to the value of the subject-matter in dispute. *AIR 1928 Nag. 146+AIR 1947 Pat. 113+AIR 1915 Oudh 121 (DB)*.

Section 7(i)—Application for final decree, appeal against rejection of—On appeal from an order rejecting an application for final decree *ad valorem* court-fee is payable. Such an appeal is not one from

an order for purposes of court-fees. *AIR 1920 All 145 (DB)+12 Cal. WN 1028 (DB)*.

Section 7(i)—Appeal, Court-fee on—If the ‘subject-matter’ both in the original suit and in the appeal is the same, the court-fee on the memorandum of appeal would be the same as on the plaint, but if the reliefs claimed in the suit and appeal are different or the ‘subject-matter’ in the suit and appeal differs, and the court-fee has to be paid on *ad valorem* basis, the court-fee payable on the memorandum of appeal would be different from the one paid on the plaint, and would have to be determined in accordance with the ‘subject-matter’ and the relief claimed by the appellant. *PLD 1973 Kar. 653=1973 Law Notes 733=PLJ 1973 Kar. 139*.

√ii. **for maintenance and annuities**—In suits for maintenance and annuities or other sums payable periodically—according to the value of the subject-matter of the suit, and such value shall be deemed to be ten times the amount claimed to be payable for one year:

¹Provided that, in suits by widows for maintenance such value shall be deemed to be the amount claimed to be payable for one year.

√iii. **for movable property having a market value**; In suits for movable property other than money, where the subject-matter has a market-value—according to such value at the date of presenting the plaint:

Case-Law

Section 7(iii)—Market Value. A state lottery ticket which has drawn a prize is movable property with a market value of the same amount as the prize it has drawn, and is within the purview of section 7(iii). *1949 Bur. LR (HC) 358 (FB)*.

Section 7(iii)—Suit being for movable property having a market value governed by section 7(iii)—Ad valorem court fee payable. *Nawab Askari Jute Mills Ltd vs Giasuddin Ahmed 41 DLR 144*.

1. This proviso was added by section 2 of the Ajmer-Marwara Court-fees (Amendment) Act, 1930 (XXXI of 1930). It applies to Ajmer-Marwara only.

Sections 7(iii) and 7(iv)(d)—It was not a suit for simple injunction as provided in section 7(iv)(d) of the Court-fees Act nor for movable property having no market value as provided in the enumeration under section 7(iv) but a suit for recovery of a launch which has a market value. *Nowab Askari Jute Mills Ltd vs Giasuddin Ahmed* 41 DLR 144.

iv. for movable property of no market-value—

In suits—

- (a) for movable property where the subject-matter has no market-value, as, for instance, in the case of documents relating to title.
- (b) [Omitted by Section 7(1) of the Court-fees (Bengal Amendment] Act, 1935 (Bengal Act VII of 1935).]

Case-Law

Section (iv)(b)—Joint family property, question as to—Court-fee is to be computed under this clause on the basis of the amount at which the plaintiff values his relief in the plaint. *AIR 1934 Lah. 563=15 Lah. 531 (FB)+('76) 6 Cal. L Jour 651 (DB)*.

Section (iv)(b)—Suit by excluded co-parcener for joint possession—Where a suit is brought by an excluded co-parcener for joint possession, court-fee is to be computed under this clause on the basis of the amount at which the plaintiff values his relief in the plaint. *AIR 1934 Lah 563=15 Lah 531 (FB)+1949 Jaipur LR 237 (DB)*.

Section (iv)(b)—Appeal in partition suite—An appeal against an order under section 4, Partition Act (1893) is governed by clause (VA) of Article 17, Schedule II (Bengal) and under this Article a fixed court-fee of Rs. 15 is payable on the memorandum of appeal. *AIR 1957 Cal. 65 (DB)*.

Section (iv)(b)—Where a suit for partition and separate possession in which plaintiff's right to a share is in dispute is decreed, and the defendant in appeals from the decree raises the same plea; Court-fee payable on appeal is ad valorem on the value of the plaintiff's share. *(36-43) Tax Dec. (Nag) 87=(36-43) Tax Dec. (Nag) 87= ('36-43) Tax Dec. (Nag) 73*.

Section (iv)(b)—Plaintiff in joint possession. Where a plaintiff is in joint possession, actually or constructively, and sues for partition and

on his suit being dismissed, appeals from such decree, he is liable to pay only a fixed fee of Rs. 10 on his appeal under Schedule II Article 17, clause (vi). *PLD 1962 Quetta 28 (DB)+('36) 163 Ind. Cas. 82 (DB) (Nag)*.

Section (iv)(b)—Mode of partition, appeal against—Where in an appeal against a final decree for partition there is no dispute as to the extent of the share to which each party is entitled, and the appeal only seeks to impeach the mode of partition. Under Schedule II, Article 17, clause (vi) fixed court-fee of Rs. 10 on memorandum of appeal is sufficient. *AIR 1943 All 281=ILR 1943 All 507+62 Ind. Cas. 979 (DB) Lah*.

Section (iv)(b)—Separate relief claimed—Where in a suit for partition two different reliefs are claimed, the plaintiff must pay court-fee on both the reliefs. Thus in a suit for partition and accounts—Court-fees must be paid both in respect of prayer for partition and in regard to claim for accounts. *AIR 1936 Mad. 562=AIR 1952 Trav-Co. 509 (FB)+AIR 1953 Mad. 846*.

iv. for movable property of no market-value—

In suits—

- (c) for declaratory decree and consequential relief—
to obtain a declaratory decree or order, where
consequential relief is prayed.

Case-Law

Section 7(iv)—Valuation of suit by the plaintiff—Court's power to correct wrong valuation: Section 7(iv) of the Court-fees Act does not give the plaintiff the sole power of valuing his suit. The court under the Code of Civil Procedure has a right to correct the plaintiff's valuation. *PLR (1960) 1 WP 511*.

Section 7(iv)—Valuation of suit by plaintiff—Court should look to the framing of the suit to find its substance, its real nature. *Nawab Askari Jute Mills Ltd vs Giasuddin Ahmed 41 DLR 144*.

Section 7(iv)(c)—Ad-valorem fees to be paid for cancellation of a document. *Sufia Khanam vs Faizun Nessa. 39 DLR (AD) 46*.

Section 7(iv)(c)—Substance to be looked at—In determining the nature of a suit for the purpose of court-fee, the court should look to the substance rather than to the form of the plaint. *Kumudini Welfare Trust vs Pakistan 11 DLR 57.*

—Where it is found that the real nature of the suit is not a declaratory one with consequential relief but in effect a substantive relief has been claimed the plaintiff must pay *ad valorem* court-fee. *Kumudini Welfare Trust vs Pakistan 11 DLR 57*

Section 7(iv)(c)—A suit for setting aside a decree is suit for substantive relief. *Kumudini Welfare Turst vs Pakistan 11 DLR 57.*

Section 7(iv)(c)—Permanent injunction sought against realisation of money—Where the consequential relief sought for is not recovery of the amount which has been imposed but not realised but a permanent injunction restraining the realisation thereof by a particular process.

Held: The value of the injunction to the plaintiff in the above case is really the value at which injury to the plaintiff should be assessed. *Kumudini Welfare Trust vs Pakistan 11 DLR 57.*

Section 7(iv)(c)—When no objective standard for valuation exists plaintiff can put his own valuation—The Court-fees Act appears to contemplate three classes of suits according to the possibility of determining the value of the reliefs in terms of money.

In suits for declaratory decrees, pure and simple and those in which it is impossible to estimate at a money value the subject-matter in dispute falling under Article 17, Schedule 2, the amount of fees payable is fixed.

In suits for recovery of money or land, there is obviously an objective basis for valuation, namely, the amount of the money to be recovered or the market value of the land. *Kumudini Welfare Trust vs Pakistan 11 DLR 57.*

Section 7(iv)(c)—Then there are some kinds of suits in which the relief claimed is capable of being valued though not according to any objective standard. In regard to such suits the Court-fees Act leaves it to the option of the plaintiff to put his own valuation on the relief and seek his forum. *Kumudini Welfare Trust vs Pakistan 11 DLR 57.*

Section 7(iv)(c)—Declaratory suit with a prayer for permanent injunction—*Ad valorem* Court-fee payable: If the suit is treated as a suit for permanent injunction or a suit for declaration of plaintiff's right with

a consequential relief in the nature of injunction, restraining the defendant from interfering with the possession of the plaintiff, the plaintiff-should have paid court-fee on *ad valorem* basis on his own valuation of the suit. In the present case the plaintiff was asking for a declaration for subsistence of his lease in respect of a fishery and was further asking for a consequential relief by way of injunction restraining the defendants from interfering with his possession in the fishery. This being the plaintiff's case (as made out in the plaint) the plaint should be constructed as a plaint for a declaration of plaintiff's right and consequential relief. We direct under the provisions of section 149 of the Code of Civil Procedure that plaintiff will not have a benefit of the order which we propose to make in his favour, until he has deposited the requisite court-fees. *Ambar Ali Talukder vs Ajman Ali 19 DLR 221.*

Section 7(iv)(c)—Court-fee is payable on the basis of the case as made out in the plaint—In considering what court-fee is payable on a plaint, caution must be observed so as not to import into the plaint anything which it does not really contain either actually or by necessary implication. In construing the plaint the Court must take it as it is, not as it may think it ought to have been. A relief not asked for cannot be imported so as to charge court-fee thereon. When a plaintiff who is entitled to consequential relief frames his suit as one for a declaration only, the Court is not entitled to insist upon his paying the court-fee proper for such a suit. *Tarachand Mondal vs Hazari Shaikh, 18 DLR 605.*

Section 7(iv)(c)—Suit may be dismissed if after the hearing of the case, it is found that proper court-fees have not been paid—But after hearing the suit on merits, if on a consideration of the plaint as a whole and the relief prayed for, it is found that plaintiff ought to have prayed for further relief and paid *ad valorem* court-fee, which he did not pay, the suit of the plaintiff is liable to be dismissed for not having paid proper and sufficient court-fee. *Tarachand Mondal vs Hazari Shaikh, 18 DLR 605.*

Section 7(iv)(c) and Article 17(iii) of the Schedule—Plaint prayed for declaration that : (1) the documents relating to the property in suit were void ab initio and that the defendant acquired no interest in them and (2) that the documents were brought about by forgeries for which no consideration passed.

Held: Prayers are purely for declaration only for which a fixed court-fee under Article 17(iii) of the Court-fees Act payable.

Plaintiff asserting possession in the suit premises through tenants and alleging that certain registered documents purporting to have been executed and registered by him were really executed by another person falsely personating himself as the plaintiff, prayed for declaration (a) that the documents are void *ab initio* and that the defendants had acquired no interest in suit premises by virtue of the documents; (b) that the documents had been brought into existence by forgeries and false personations and that no considerations passed by the documents.

In determination of court-fees payable on the point in such a case, there being previous conflicting decisions, the following questions were referred to the Full Bench:

(1) In a suit for declaration that certain document was void *ab initio* as it was not executed by the plaintiff but executed by somebody else by falsely personating him to be executant, and, as such, the document has not affected the right, title and interest of the plaintiff, whether he is bound to pay court-fees under section 7(iv)(c) of the Court-fees Act as a suit for declaratory decree with consequential relief or under Article 17, Schedule II of the Court-fees Act as a suit for bare declaration;

(2) Whether it is necessary for the plaintiff in such a suit to ask for consequential relief as contemplated under section 39 of the Specific Relief Act and if he has not specifically asked for such a relief, whether it should be held, by necessary implication, that there is a prayer for such a relief, because it comes under section 39 of the Specific Relief Act ; and

(3) If suit be framed as one for declaration that certain document is void, should it be treated as one coming under section 42 or section 39 of the Specific Relief Act.

Hasan J—The first prayer for a declaration that the documents are void *ab initio* comes under section 39 of the Specific Relief Act and the second prayer that the defendants have acquired no interest in the premises by virtue of the said documents comes under section 42 of the Specific Relief Act. They are prayers for declaration only and nothing more.

The prayer (b) is nothing but the ground in support of prayer (a). As such the plaintiff is liable to pay fixed court-fee under Article 17(iii), Schedule II of Court-fees Act.

Court is not bound to give relief for cancellation of a document in every case under section 39 of the Specific Relief Act by cancelling the document, whether there is a prayer for cancellation or not.

The language of section 39 does not make it obligatory on the Court to order the instrument to be delivered up or cancelled even if not so prayed for. A relief may be granted when it is prayed for and not otherwise.

When illegality of the document appears on the face of it, its cancellation may not be necessary. Where a person not a party to the instrument, apprehending injury thereby sues to have it adjudged void or voidable, he is not in a position to pray for cancellation. In such cases plaintiff cannot be compelled to pray for cancellation and pay *ad valorem* court-fee for it where illegality or nullity of the document is not apparent, the danger of its use in defence is always there and in such cases cancellation and delivering up of the document is necessary and the Court may give such relief. But the relief shall have to be prayed for and unless prayed for, it cannot be granted nor can the plaintiff be forced to pray for it and pay *ad valorem* court-fees for it. A suitor has absolute authority to frame his suit as he likes : he may suffer or gain for so doing. *Daibakilal Bosak vs Iqbal Ahmed Quoreshi 17 DLR 119.*

Satter J—The suit as framed is a purely declaratory one in which the document need not be cancelled. Plaintiff is to pay fixed Court-fees for declarations separately in respect of several documents.

A document to which the plaintiff is not a party need not be cancelled and mere declaration that it is void is sufficient. Only a document which has vested *ex facie* a valid claim, needs to be challenged. A forged document does not come under this category.

If, however, the plaintiff asks for cancellations of a forged document, though such cancellation is not needed he must pay for it.

If on consideration of the plaint as a whole, the Court finds that there are both prayers for declaration and cancellation or that cancellation is to be ordered having regard to the case made out in the plaint, fixed court-fee under Article 17 (iii) Schedule II of the Court-fee Act is not sufficient.

Simply because section 39 of the Specific Relief Act contemplates that relief of cancellation can be granted by the Court, even when the plaintiff has not asked for it, it cannot be said that the plaintiff need not pray for it. The plaintiff must pay for the relief if it is granted by the Court.

It is not necessary to cancel a document in every case. It depends upon the facts of a case. Relief of cancellation under section 39 need not be

specifically asked for in view of the language of the section. It may be granted by the Court, if such a relief has to be given, the plaintiff must pay for it and payment of fixed court-fee for mere declaration is not sufficient. *Daibakilal Bosak vs Iqbal Ahmed Quoreshi 17 DLR 119.*

Sayem J—The relief of cancellation of a written instrument in a suit for adjudging or declaring the instrument void or voidable is not a substantive relief, as distinguished from a consequential relief, but is a consequential relief within the meaning of section 7(iv)(c) of the Court-fees Act.

In this respect there is no distinction between a decree of a Court and a document of other type. Both are written instruments in the sense the expression has been used in section 39 of the Specific Relief Act.

The plaintiff has omitted to claim consequential relief in terms of section 7(iv)(c) of the Court-fees Act or a substantive relief. The first part of prayer (a) is for a declaration falling under section 39 and its second part for a declaration in terms of section 42 of the Specific Relief Act.

Both being simple declarations, section 7(iv)(c) can have no application and they are governed by Article 17(iii) of the Second Schedule of the Court-fees Act.

The contention that in view of the second part of prayer (a), namely, the prayer for declaration that the defendants have acquired no interest in the premises by virtue of the said documents and in view of the prayer (b) that no consideration passed by the documents, the suit was virtually a suit for cancellation of the said documents was over-ruled.

At the stage of determination of the question of court-fee the Court is not concerned with the merits of the suit for its maintainability.

The contention that in a suit under section 39 of the Specific Relief Act. plaintiff need not specifically pray for cancellation and that the section casts a duty on the Court to grant the relief cannot stand.

It is only the relief specified in the second paragraph of the section 39 which provides that if the instrument has been registered under the Registration Act, the Court shall, in its discretion, adjudge it void or voidable and order it to be delivered up and cancelled, send a copy of its decree to the registration office for noting the fact of cancellation, and that need not be prayed for. The discretion mentioned in the section

cannot relate to adjudgment alone but also to the relief of cancellation. A discretion conferred on the Court cannot be exercised in favour of a party even though the party chooses not to ask for its exercise. It cannot be said that once an instrument is adjudged void the discretion of the Court for cancellation is to follow, just as the relief set out in the second paragraph is to follow an order of cancellation. *Daibakilal Bosak vs Iqbal Ahmed Quoreshi*. 17 DLR 119.

Suit for setting aside a decree on the allegation that it was obtained by fraud falls within the purview of section 7(iv)(c) of the Act. Such a suit is one for declaration with a prayer for consequential relief. *S Zafar Ahmed vs Abdul Khaleque* 16 DLR (WP) 205.

Section 7(iv)(c)—Plaint liable to be rejected if plaintiff's allegation of being in possession is found to be not true—Suit filed for declaration of title and injunction on the suit land and paid court-fees as provided in section 7(iv)(c) of the Court Fees Act. If on the evidence it is found at the trial that the plaintiff as a matter of fact is not in possession, in that case the suit will be liable to be dismissed as he has not prayed for recovery of possession on payment of *ad-valorem* Court-fees on the value of the land which is the subject-matter of the litigation. *Fazlul Haque vs Hatem Gasu* 27 DLR 55.

Prayer for a declaratory decree that the wakf deed is void, plaintiff not being a party to the deed—Fixed court-fee sufficient without asking for cancellation of the deed.

The plaintiff's suit was for declaration that the wakf deed relating to the property in suit (of which the plaintiff is a co-sharer) be declared void and a further prayer that the suit property be partitioned and a separate 'saham' be allotted to plaintiff.

The first question arose was whether the prayer for declaration that the wakf deed was void to which the plaintiff was not a party should further contain a prayer that the document be cancelled.

Held: The plaintiff not being a party to the wakf deed the prayer for declaration that it is void is sufficient and the prayer for cancellation is not necessary. *Bibi Ayesha Khatun vs Abdur Rahman*, 21 DLR 468.

Section 7(iv)(c) & (vi-a)—In a suit for partition and recovery of possession the plaintiff is to pay ad valorem court-fee on the value of his share property but prays for declaration of his title and partition then also

he is to pay *ad valorem* Court fee on the value of his share of the suit as partition in such a suit is a consequential relief to the prayer for declaration of title in his share of the suit property as in the present suit. *Mahamudul Hoque and 5 others vs Nowab Ali Chowdhury and 18 others* 49 DLR 92.

Section 7(iv)(c)/(vi-a)—A simple suit for partition is to be filed with a fixed court-fee when the plaintiff asserts that he is in possession of the property. But when a suit is filed for partition and for recovery of possession then he is required to pay *ad-valorem* court-fee on a value of his share of the suit property. Even if the plaintiff claims to be in possession of his share of the suit property but he prays for declaration of his title and partition then also he is required to pay *ad valorem* court-fee on the value of his share of the suit property. *Mahmudul Huq and others vs Nowab Ali Chowdhury and others* 49 DLR 405.

Sections 7(iv)(c) & 8C—In an objection regarding under-valuation of the plaintiff's suit Court may under section 8C of the Court-fees Act revise and determine the valuation of the suit where objective standard for determining the valuation is available irrespective of the fact that no rule has been made by the High Court under section 9 of the Suits Valuation Act. *Karamat Ali vs Province of East Pakistan*. 22 DLR 646.

Sections 7(iv)(c) & 8C—In a suit for declaration of title to property and perpetual injunction where the reliefs claimed are substantial according to the construction of the plaint by the Court, payment of Court fees will be made according to the valuation as determined by the Court—plaintiffs own valuation will not be acceptable. *Khalkur Rahaman vs Syed Asan Ali* 40 DLR 292.

Plaintiff's principal prayer was for declaration that the action of the government declaring the plaintiff's property as enemy property is without jurisdiction, which prayer being incapable of any objective valuation, plaintiff's valuation must be accepted—Prayer for injunction can be treated as a consequential relief. *Sree Radha Krishna vs Bangladesh*. 30 DLR 116.

Sections 7(iv)(c) & 8C—The scope of the suit is to be determined with respect to the allegations in the plaint and not with reference to the allegation in the written statement. *MA Nasir vs Bangladesh* 28 DLR 392.

Sections 7(iv)(c) & 8C—If after institution of the suit, some events take place and the plaintiff is dispossessed from a part of the suit land, this

subsequent event will not affect the suit as framed. *MA Nasir vs Bangladesh* 28 DLR 392.

Sections 7(iv)(c) & 8C—If at the trial on evidence, the Court is satisfied that the structures were railed after institution of the suit, the court would be competent to pass appropriate order to give full relief to the plaintiffs without amending the plaint. *MA Nasir vs Bangladesh* 28 DLR 392.

Sections 7(iv)(c) & 8C—Suit filed for permanent injunction and declaration on the allegation of the plaintiff's being in possession and valued it on the basis of injunction as a consequential relief under section 7(iv)(c)—Suit maintainable. If upon trial the plaintiff is found out of possession, suit would fail for not praying for recovery of possession on payment of *ad valorem* fee on the value of the land. *Fazlul Haque vs Hatem Gasu* 28 DLR 362.

Sections 7(iv)(c) & 8C—When a relief claimed has no objective standard of valuation and a mandatory injunction is prayed as a consequential relief the subject-matter falls under section 7(iv)(c) in which the plaintiff shall state the amount at which he valued the relief. *Agrani Bank vs Ejaj Jamil* 29 DLR 56.

Sections 7(iv)(c) & 8C—If the plaint discloses that relief sought is not one for declaration of title to land but for some relief relating to land (in this case it was for vacating a cancellation of an allotment order) and for permanent injunction, such a suit falls under section 7(iv)(c).

The prayers in the plaint were as follows:

- “(a) That a decree be passed declaring that the purported order of cancellation of allotment bearing No. 422(64) and the purported letter of re-allotment bearing No. 298(52) are illegal, without any lawful authority, void and of no legal effect or consequences.
- (b) That a decree for permanent injunction be passed against the defendants restraining them from interfering with or disturbing plaintiff's possession in the suit property.”

The plaint concluded saying-

“That the suit being one for declaration and permanent injunction and there being no objective standard of value of the reliefs sought for, the plaintiff values his suit at Rs 120.00 and *ad valorem* court-fee has been paid in that valuation.

Held—It is clear the suit is for declaration and for permanent injunction.

The suit thus being one for declaration as to legality of certain orders and consequential relief by way of injunction, the same is governed by section 7(iv)(c) of the Court Fees Act inasmuch as it is not for declaration of title to the lands but for permanent injunction restraining interference with plaintiff's possession and, as such, valuation put by the plaintiffs and court fee paid on the plaint should be accepted as correct.

The learned Subordinate Judge misdirected himself when he held that because the impugned order of cancellation relates to the lands in question in respect of which injunction was prayed for, there was an objective standard of valuing the suits and, as such, *ad valorem* court fee on the basis of the valuation of the land in suit must be paid. *Md Yeasin vs East Pakistan*, 26 DLR 82.

Sections 7(iv)(c) & 8C—The section provides for this class of suits. However, capricious or unreasonable the plaintiff's valuation may appear to be, it is not competent for the Courts to revise the valuation. *Kumudini Welfare Trust vs Pakistan* 11 DLR 57.

Sections 7(iv)(c) & 8C—Valuation of a suit—Plaintiff's absolute discretion—In a suit coming under section 7(IV)(c) of Court-fees Act having, as regards its valuation, no objective standard available, nor have any rules been framed by the High Court under section 9 of the Suits Valuation Act, plaintiff has a discretion as to the amount at which the relief is to be valued and the court has no power to revise such valuation.

Section 8C Court Fees Act, gives the Court power to revise the valuation of any suit. But that does not improve matters as regards cases dealt with in section 7(iv)(c) inasmuch as it does not indicate any method or principle by which the court can revise the plaintiff's valuation in cases where there is no objective standard.

The value of a relief sought in any suit is its value to the plaintiff, that is to say, its value is which the plaintiff will lose if it is refused or gain if it is allowed. *Star Film Distributors vs Sargam Pictures* 6 DLR 466.

Sections 7(iv)(c) & 8C—Consequential relief—Consequential relief for the purposes of the Court-Fees Act means a substantial and immediate remedy in accordance with the title which the court has been

asked for declaration. It is some relief which would follow directly from the declaration given, the valuation of which is not capable of being definitely ascertained and which is not specially provided for anywhere in the Act and cannot be claimed independently of the declaration as a substantive relief. *Bejoy Kr Sarnakar vs Governor General of Pakistan*. 6 DLR 289.

Sections 7(iv)(c) & 8C—Whether the prayer for an injunction is a surplusage or not depends on the facts of each case. The injunction should be consequential relief, for the main prayer for declaration under section 7(iv)(c), that is to say, it should follow from the declaration. *Bejoy Kr Sarnakar vs Governor General of Pakistan*. 6 DLR 289.

Sections 7(iv)(c) & 8C—**In determining the nature of a suit for the purpose of court-fee, the court should look to the form of the plaint**—In determining the object or nature of a suit Court must look rather to the substance than to the form of the plaint; and, in doing so, if the Court comes to the conclusion that though the relief asked for in the plaint is for declaration with consequential relief, the plaintiff really wants to obtain a substantive relief, then a proper court-fee on that relief can be demanded irrespective of the valuation put by the plaintiff on the ostensible relief. *Kumudini Welfare Trust vs Pakistan* 11 DLR 57.

Sections 7(iv)(c) & 8C—Where it is found that the real nature of the suit is not a declaratory one with consequential relief but in effect a substantive relief has been claimed the plaintiff must pay *ad valorem* court-fee.

A suit for setting aside a decree is a suit for substantive relief. *Kumudini Welfare Trust vs Pakistan* 11 DLR 57.

Sections 7(iv)(c) & 8C—When a claim preferred under Order 21, r. 58 of the CP Code, in an execution proceeding has been dismissed and the claimant thereafter brings a suit under the provisions of order 21, rule 63 for a declaration of his right to the property, the suit is governed by Article 17(1) of Schedule II of the Court Fees Act and not by section 7(iv)(c) of the Court Fees Act. The value of the action must mean the value of the plaintiff. *Swadeash Ranjan Das vs Carew & Co* 8 DLR 359.

Sections 7(iv)(c) & 8C—Where the consequential relief sought for is not recovery of the amount which has been imposed by way of tax but not realised but a permanent injunction restraining process for realisation of the tax;

Held: The value of the injunction to the plaintiff in the above case is really the value at which injury to the plaintiff really should be assessed. *Kumudinin Welfare Trust vs Pakistan 11 DLR 57.*

Sections 7(iv)(c) & 8C—In suits for recovery of money or land, there is obviously an objective basis for valuation, namely, the amount of the money to be recovered or the market value of the land.

Then there are some kinds of suits in which the relief claimed is capable of being valued though not according to any objective standard. In regard to such suits, the Court-Fees Act leaves it to the option of the plaintiff to put his own valuation on the relief and seek his forum.

Section 7(iv)(c) provides for this class of suits. However capricious or unreasonable the plaintiff's valuation may appear to be, it is not competent for the Courts to revise the valuation. *Kumudini Welfare Trust vs Pakistan 11 DLR 57.*

Sections 7(iv)(c) & 8C—Determining factors whether a suit falls under section 7(iv)(c) is to ascertain what is the substantial relief claimed—In determining whether a suit for a declaration falls under section 7(iv)(c) of the Court Fees Act, it is necessary in the first instance to find out what is the substantial relief claimed in the suit. If on averment made in the plaint, the substantial relief could not be other than one for a declaratory decree and it is coupled with another relief which follows naturally in the wake of declaration then the case must be regarded as falling within the ambit of section 7(iv)(c). The question has to be determined by looking at the substance of the plaint only whether the suit is really one for declaration with a consequential relief or is not a camouflage attempt in words to disguise a specific relief claimed in the garb of a suit for declaration without a consequential relief. *Nagendra N Sen Roy vs Saiyada Ali Jamadar. 8 DLR 100.*

Sections 7(iv)(c) & 8C—Cross-objection in appeal—The fundamental point of distinction between Nausha Bi's case and the present was that whereas the case was one of possession and, therefore, came within the orbit of section 7(v) of the Court-Fees Act the suit in the present case was one for a declaration with consequential relief, falling within section 7(iv)(c). Unlike section (v), section 7(iv)(c) does not provide how the value of the subject-matter is to be computed, the plaintiff being, on the contrary, entitled to place his own valuation on the relief sought. That privilege is not extended to the cross-objections and under Article I of

Schedule I, Court-fees Act, the amount or value of the subject-matter in the present case is undoubtedly the market value of the land in dispute, (*PLR 1954 Lahore 326*), distinguished. *PLR (1960) 1 WP 911*.

Sections 7(iv)(c) & 8C—In a suit by the plaintiff in possession for declaration of title of land and for injunction, *ad valorem* court-fee is to be paid upon the valuation given by the plaintiff. *40 CLJ 150, 32C, 734, 34 CWN 321, 1930 Cal 473, 34 CWN 870, 16 CLJ 194*, but plaintiff's valuation should not be arbitrary. *16 CLJ 194, 1928 Cal 55, 1931 Mad 69, 35 CLJ 144: 1922 Cal 242*.

Sections 7(iv)(c) & 8C—Suit for permanent injunction restraining defendant from executing the decree should be valued on the objective standard represented by the extent to which plaintiff will be benefitted. *1940 Cal 560, 44 CWN 591*.

Sections 7(iv)(c) & 8C—In a suit for injunction the court-fee is to be paid not only on the value of the property but on the valuation of injunction also *19 CLJ 15, 40 CLJ 150*.

Sections 7(iv)(c) & 8C—Plaintiff's valuation for the purpose of injunction is the valuation for the purpose of jurisdiction. *45 B. 567, 48A 412:1926 All 423*.

Sections 7(iv)(c) & 8C—Plaintiff's valuation of consequential relief decides the court-fee and forum of the court. *22 CWN 753 PC, 35 CLJ 144, 34C 734: C 11 CWN 1133*.

Sections 7(iv)(c) & 8C—In a suit for declaration of title to property and perpetual injunction where the reliefs claimed are substantial according to the construction of the plaint by the Court, payment of Court fees will be made according to the valuation as determined by the Court—Plaintiff's own valuation will not be acceptable. *Khalkur Rahman vs Syed Asan Ali 40 DLR 292*.

Sections 7(iv)(c)—7(xii)—Court is bound to accept the valuation of the relief, however arbitrary it may be. *1946 Lah 96 FB 1953 Bom 382*.

Sections 7(iv)(c)—7(xii)—Valuation of a suit for declaration that a decree is void and for an injunction restraining the defendant from executing it. *1940 Cal 482*.

Sections 7(iv)(c)—7(xii)—In a suit falling under section 7(iv)(c), the value for the purpose of court-fee and jurisdiction should be the same. *1939 Nag 50 FB*.

Section 7(iv)(c)—Suit for bare declaration—If the object of the plaintiff in framing his suit for a bare declaration is to escape the payment of higher court-fees, there is nothing in the law which would debar him from doing so. *AIR 1952 Madh B 147.*

Section 7(iv)(c)—Court-fee for bare declaration. On a suit for a bare declaration, Court-fee is payable under Schedule II, Article 17 (iii). *AIR 1943 Lah 39(DB)+AIR 1942 Pesh 62(DB).*

Section 7(iv)(c)—Declaration may itself be consequential relief—Even a bare declaration is capable of being a consequential relief within the meaning of this clause. *AIR 1939 Oudh 125 (DB)+AIR 1939 Pat 219 (DB).* Thus where the plaintiff sues for a declaration that a decree is null and void and is not executable against him; later part of the declaration may be regarded as a consequential relief. *AIR 1941 Lah 97=ILR 1941 Lah 451 (FB).*

Section 7(iv)(c)—Unnecessary consequential relief claimed—Where prayer for consequential relief is a pure surplusage, the suit will be only a declaratory suit pure and simple. *AIR 1929 Mad 296 (DB)+1911 Pun LR No. 47, 215.*

Section 7(iv)(c)—Several declarations claimed—Where a number of separate declarations are asked for in a suit, separate court-fee of Rs 10 will have to be paid in respect of each declaration. *AIR 1933 All 350=55 All 274 (DB)+18 Mad 459 (DB)+13 All 389 (DB).*

Section 7(iv)(c)—Separate reliefs of declaration and other substantive relief—Where in a suit two independent reliefs—for declaration and for other substantive relief are claimed, this clause will not apply. The declaratory relief will come under Schedule II, Article 17 (iii) and the other relief will come under other appropriate provisions. *AIR 1937 All 148=ILR 1937 All 443 (DB)+AIR 1955 ALL 177(DB).*

Section 7(iv)(c)—Consequential relief—"Consequential relief" in this clause must be such that it will constitute further relief within section 42, Specific Relief Act. *AIR 1937 Sind 248+AIR 1935 All. L Jour 1319(DB).* But it must be noted that though consequential relief will be further relief, further relief will not necessarily be a consequential relief. *AIR 1952 Pepsu 168=ILR 1952 Pat 319.*

Section 7(iv)(c)—Declaration and consequential relief—Where the plaintiff has claimed both declaration and consequential relief, the case is governed by section 7(iv)(c) of the Court-fees Act, *PLD 1967*

Karachi 733+PLD 1957 Lah.126=PLR 1957(1)WP 461 and court-fee must be paid according to value of relief claimed. A suit cannot be valued arbitrarily. *PLD 1973 Karachi 653=PLJ 1973 Karachi 139=1973 Law Notes 733*. Thus when a suit is for rectification of an instrument under section 31, Specific Relief Act, the suit would be one for declaration and consequential relief within this clause. *AIR 1922 Nag 264*.

Section 7(iv)(c)—Valuation for court-fee and jurisdiction—

Where the appellants have themselves valued the relief claimed by them both for the purposes of jurisdiction as well as court-fee at a certain figure. This may be considered to be the value to them of the relief which they have claimed. *PLD 1973 Karachi 633=1973 Law Notes 733=PLJ 1973 Karachi 139*.

“Further relief”—Further relief in section 42, Specific Relief Act refers to some relief to which plaintiff will be necessarily entitled on the basis of title declared. *AIR 1919 Mad 233(DB)*. A relief to which plaintiff would not be entitled unless a certain title were established will not be a further relief based on such title unless the plaintiff would necessarily be entitled to such relief if title was established. *AIR 1935 Mad 203=58 Mad 448*. Therefore, further relief must be asked for as incidental to the declaratory decree. *AIR 1952 Pepsu 168=ILR 1952 Patna 319*.

Section 7(iv)(c)—Court-fee is payable on actual relief prayed for—The question whether a suit comes within the terms of section 42 of the Specific Relief Act, or not will not affect the question of court-fees, which must be determined on the basis of what the plaintiff actually sues for and not on the basis of what he is entitled, under the law, to sue for. *PLD 1959 Bal I=AIR 1941 Lah 97=ILR 1941 Lah 451 (FB)*.

Section 7(iv)(c)—Where the plaintiff not only sued for declaration but also asked for a temporary injunction restraining the defendant from executing *ex parte* decree against the plaintiff. It was held, that the real relief is perpetual injunction and court-fee must be paid on it. *AIR 1922 Sind 20=16 Sind LR 109*.

Section 7(iv)(c)—Claim by defendant—Where a defendant makes a claim which the plaintiff denies, court fee is payable on the amount, payment of which the plaintiff seeks to avoid. He must pay the court-fee on it straight away. He cannot urge that he will do so when the matter is finally decided and the actual relief is determined. *NLR 1983 UC 310*.

Section 7(iv)(c)—Further relief not available—Where the plaintiff is not able to sue for possession at the time when he files a declaratory

suit, he will be entitled to sue for a mere declaration and his suit will come under Schedule II, Article 17(iii). *AIR 1932 Lah 97 (DB)+AIR 1943 Oudh 462 (DB)+AIR 1924 Patna 385 (DB)*.

Section 7(iv)(c)—Where essential relief in the suit is recovery of possession, section 7(v)(c) would apply irrespective of the fact whether the plaintiff asked for declaration of title or not. Section 7(iv)(c) does not govern such cases. *1982 CLC 9=NLR 1981 Civ 126*.

Section 7(iv)(c)—Separate reliefs of declaration of title and possession—Where a declaration of title and relief of possession are asked for as two separate reliefs, the declaratory part will come under Schedule II, Article 17(iii) and relief as to possession will come under para (v). *AIR 1937 All 148 (DB)+AIR 1958 Bom. 307*.

Section 7(iv)(c)—Mere suit for possession.Where the plaintiff's title to possession depends on his getting a decree setting aside a deed of transfer or decree; the plaintiff's suit for possession will necessarily imply a prayer for cancellation of the deed or decree, and court-fee must be charged accordingly. *AIR 1930 Oudh 104 (DB)+AIR 1952 Punjab 335 (FB)*.

Section 7(iv)(c)—Suit for partition and possession—If the real purpose behind the suit is to finally adjudicate the questions of title involved particularly as against third party alienees and without the determination of which the relief for partition in respect of the properties in suit cannot be obtained, it cannot be taken to be purely a suit for partition and cannot be stamped as a partition suit only. *AIR 1962 Orissa 102 (DB)*.

Section 7(iv)(c)—Suit for declaration and injunction—A suit for declaration and injunction will come under this clause where injunction is asked for as a consequential relief based on a declaratory decree. *AIR 1930 Sind 198+AIR 1922 Sind 20=16 Sind LR 109+AIR 1937 Nag 14*.

Section 7(iv)(c)—Separate relief for declaration and injunction.—A plaintiff may sue for declaration and injunction as independent reliefs. In such a case Schedule II, Article 17(iii) will apply to former relief and section 7(iv)(d) will apply to the latter relief. *1904 Punjab LR No. 118, P 419 (DB)+AIR 1926 All 423 (DB)*.

Section 7(iv)(c)—Suit for mere injunction—To a suit for mere injunction without declaration, section 7(iv)(d) applies. *AIR 1955 Mys. 65 (FB) (AIR 1952) Mys 80 Over-ruled+AIR 1952 Mad 41*.

Section 7(iv)(c)—Valuation of relief—While the plaintiff is at liberty to value the relief claimed in suits governed by the various clauses

of section 7(iv) including those for a declaration with the consequential relief of injunction, he cannot be allowed to put an arbitrary value and if he does so and the Court considers that it is too low or unreasonable in that it bears no relation to the right litigated, it may require him to correct the valuation, *AIR 1964 Madhya Pradesh 9(DB)+AIR 1939 Nag 50 (FB)* or it may itself correct the valuation for the purpose of jurisdiction as well as Court-fee, *PLJ 1979 Lah 278=1979 CLC 578* and for that purpose call upon the plaintiff to satisfy the Court by producing *naqsha jat padwar* and *fard khalis munafa*. If the plaintiff does not produce those documents, the Court may reject the plaint. *PLD 1979 Lah 534=1979 Law Notes 382=1979 CLC 705+1979 CLC 539*.

Section 7(iv)(c)—Suit to set aside decrees and instruments—In deciding upon the question of court-fees, the Court should not be guided merely by the form of the plaint or the words in which the prayer is couched. The entire plaint has to be looked into, and the real purpose of the suit has to be ascertained. Where in a suit the plaintiff merely seeks a declaration, the Court has to consider whether a consequential relief is implicit in the declaration, or, in other words, whether the effect of making the declaration will be that the plaintiff will get a consequential relief also. If that is so, the provision applicable must necessarily be section 7(iv)(c) of the Court-fees Act. At the same time, it is important to remember that, when the plaintiff frames his plaint in the form of a declaratory suit, he takes the consequences. If the Court trying the suit comes to the conclusion that he is not entitled to a declaration as he has not asked for a further relief which he was able to seek, his suit will fail. Hence, in deciding which provision of the Court-fees Act would be applicable, the Court must ordinarily read the plaint as it is, and must not read it with the addition of a relief which has not been asked for. *AIR 1961 Patna 470*.

Section 7(iv)(c)—Suit for bare declaration—A suit for a mere declaration that an instrument or decree is void against the plaintiff comes under Schedule II, Article 17 (iii). *AIR 1933 All 488 (FB)+AIR 1949 Nag 37 +3 Sau LR 137*.

Section 7(iv)(c)—Void decree or instrument—Under section 7(iv)(c) the plaintiff is entitled to fix any value he likes on the plaint. The plaintiff is the sole arbiter of this valuation and can fix it arbitrarily at any figure, however disproportionate it might be with the real value of the subject-matter. *PLD 1949 Lah 461 (FB)=PLR 1948 (WP) 1*.

Section 7(iv)(c)—Court-fee payable on the plaint of a case for a declaration that a bond is null and void is *ad valorem* Court-fee under section 7(iv)(c). *PLD 1953 Bal. 26.*

Section 7(iv)(c)—Valuation for cancellation—A suit for cancellation of an instrument or a decree will come under Schedule I, Article I. *AIR 1941 Lahore 97=LR 1941 Lahore 451 (FB)+AIR 1932 All 485 (FB).*

Section 7(iv)(c)—Where no consequential relief is claimed in the plaint and the suit is for a bare declaration, the court cannot treat the suit as one for declaration and consequential relief and demand court-fee under section 7(iv)(c). *AIR 1952 Madh B 147.*

Section 7(iv)(c)—Suit for possession competent, no declaration and cancellation need be sought—Where the plaintiff sues for declaration that a certain deed to which he was not party is illegal and not binding on him and for possession; a prayer for declaration is a surplusage and the suit comes under section 7(v). *AIR 1952 Mad 548+AIR 1951 Trav-Co. 142+AIR 1947 Mad 237.*

Section 7(iv)(c)—Separate reliefs claimed—Where separate reliefs are claimed in a suit separate Court-fee on all the reliefs must be paid. Thus in a suit for a declaration that an alleged receipt was a forgery an additional prayer was made for a finding of absence of consideration if the receipt was found to be genuine. It was held, that the latter prayer was for an additional relief and *ad valorem* court-fee on the amount involved under the receipt was payable in addition to fixed fee paid on the first relief. *AIR 1953 Madh B 81=ILR 1953 Madh B 39.*

Section 7(iv)(c)—Suit to set aside execution sale—Where in a suit validity of the decree is not questioned but sale in execution of the decree is attacked as a nullity; the suit for recovery of property is one for possession falling under section 7 para (v). *AIR 1922 Bal. 506=49 Cal 880 (DB).*

Section 7(iv)(c)—Transfer of minor's property by his guardian—Where the guardian of a minor transfers the minor's property in circumstances in which such a transfer is not justified, the minor is not bound to sue to set aside the transfer. His suit for declaring the transfer invalid would be only for a mere declaration coming under Schedule II, Article 17(iii). *AIR 1943 Mad 427+AIR 1928 Mad 816 (DB).*

Section 7(iv)(c)—Suit for injunction and appointment of receiver—Where an injunction or appointment of a receiver is asked for

as sole relief, the injunction will come under section 7(iv)(d) and appointment of Receiver will come under Schedule II, Article 17(vi). *AIR 1949 Patna 346 (DB) (AIR 1922 Patna 61, Overruled.)*

Section 7(iv)(c)—Suit under section 53, TP Act—A creditor's suit under section 53, Transfer of Property Act is a purely declaratory suit for purposes of court-fee. *AIR 1939 Mad 894=ILR 1940 Mad 73.*

Section 7(iv)(c)—Interference in valuation by palintiff—Where a plaintiff makes an absurd and outrageous valuation in order to have his suit tried in a particular court, the court can interfere with the plaintiff's valuation under section 151 of the Civil Procedure Code. *AIR 1928 Oudh 260.*

Section 7(iv)(c)—Value of jurisdiction may furnish criterion for valuation of Court-fees—The value given for purposes of jurisdiction may often furnish a criterion for fixing proper value for court-fees. *AIR 1914 All 72=36 All 500(DB).*

Section 7(iv)(c)—Change of valuation for appeal—The plaintiff cannot be allowed to change valuation for jurisdiction in appeal to bring his appeal within the jurisdiction of a particular Court. Thus where in a partition suit he has fixed valuation under section 7(iv)(c) at a certain sum being his share of property, he cannot be allowed to raise the valuation to take the appeal to the High Court on the ground that he was valuing the entire property and not merely his share at the appellate stage. *AIR 1961 Patna 307.*

Section 7(iv)(c)—Suit to set aside decree—Where the value of the property in respect of which the plaintiff wants to get rid of decretal liability is less than the latter, payment of Court-fee on the market value of such property cannot be considered improper. *AIR 1957 Nag 53=ILR 1956 Nag 486 (DB).*

Section 7(iv)(c)—Applicability of Schedule II, Article 17 to appeal—For the applicability of provisions of Schedule II, Article 17 to appeal the criterion is the subject-matter of the suit in the trial Court, and not the subject-matter of the appeal. *AIR 1941 Lah 123=ILR 1941 Lah 234 (FB)+AIR 1952 Nag 350 (FB).*

✓ **iv. for movable property of no market-value—**

In suits—

✓ **(d) For an injunction—to obtain an injunction.**

Case-Law

Section (iv)(d)—Suit for injunction. The kind of suit contemplated by this clause is that in which a perpetual injunction is claimed. A suit will not come under this clause merely because an application is made therein under Order 39 of the Civil Procedure Code for the grant of a temporary injunction. But where the suit itself is for an injunction this clause will apply whether the injunction sought is preventive or mandatory. (*82) 4 All 320 (FB)+AIR 1940 Cal 552 (DB).

Section (iv)(d)—Declaration and injunction—Where a declaration and an injunction are claimed as independent substantive reliefs, the prayer for injunction must be valued separately under this clause. 19 All 60 (DB).

Section (iv)(d)—Injunction as consequential relief—A suit for declaration in which an injunction is claimed as a consequential or ancillary relief falls under section 7(iv)(c) and not under this clause. AIR 1926 All 602=47 All 501.

Section (iv)(d)—Suit for injunction and other relief—Where a suit is brought for several independent reliefs including relief by injunction, court-fee on different reliefs is payable separately. 1894 Bom PJ (DB).

Section (iv)(d)—Valuation by Court—In cases where the plaintiff is entitled to put his own valuation, if the court comes to the conclusion that it is arbitrarily fixed, it can put its own valuation and ask the plaintiff to pay court-fee on the valuation. PLD 1982 Kar 940.

Section (iv)(d)-Demolition of building—Court-fee—In cases where relief is to demolish a building *ad valorem* court-fee should be paid on the value of such building or portion of the building. PLD 1982 Kar 940.

Sections 7(iv)(d) & 7(iii)—It was not a suit for simple injunction as provided in section 7(iv)(d) of the Court-fees Act nor for movable property having no market value as provided in the enumeration under section 7(iv) but a suit for recovery of a launch which has a market value. *Nowab Askari Jute Mills Ltd vs Giasuddin Ahmed* 41 DLR 144.

iv. for movable property of no market-value—

In suits—

(e) for easements—for a right to some benefit (not herein otherwise provided for) to arise out of land, and

(f) for accounts—for accounts

✓ according to the amount at which the relief sought is valued in the plaint or memorandum of appeal ¹[subject to the provisions of section 8C.]

²"In all such suits the plaintiff shall state the amount at which he values the relief sought :

Provided that in such suits the valuation shall not be such as would attract a court-fee of less than one hundred taka"; ✓✓ 200

Case-Law

Section 7(iv)(f)—Accounts—Suit for—Court fee—Plaintiff at liberty to value suit for purposes of court-fee at any figure he chooses—For purposes of choosing forum of appeal arising out of such suit, appellant to follow value put by plaintiff himself—Suits Valuation Act (VII of 1887). Section 8: *The Pakistan Boy Scouts Association vs Qazi Muhammad Sharif and another*; (1969) 21 PLD (Peshawar) 175.

Court-fee is to be paid on the claim as framed by the plaintiff—Court-fee is payable on the claim as framed in the plaint and not on the claim as it ought to be, and this depends on the constitution of the plaint and the relief is claimed thereunder, and from these must be ascertained the object or nature of the suit: *Kumudini Welfare Trust vs Pakistan* 11 DLR 57.

Section 7(iv)(f)—Valuation of suit for account—According to section 7(iv)(f) of the Court-fees Act, court-fee in a suit for accounts is to be computed according to the amount at which the relief sought is valued in the plaint. *PLD 1969 Pesh 175*.

1. These words were inserted by section 7(2) of the Court-fees (Bengal Amendment) Act, 1935 (Bengal Act VII of 1935).

2. Substituted vide section 2(1)(a) of Act No. 36 of 1989.

Section 7(iv)(f)—Suit for dissolution of partnership and accounts. A suit for accounts of a dissolved partnership, ('95) 22 Cal 692 (DB)+AIR 1957 Mad 667 or a suit for dissolution of partnership and for accounts is a suit for accounts. PLD 1970 Kar 548+22 Ind Cas 71 (DB)(Bom)+('10) 32 All 517.

Section 7(iv)(f)—**Valuation of suit**—In a suit for account it is within the discretion of the plaintiff to fix the value of the suit. Whether or not any amount is due to him will depend on the rendition of accounts. PLD 1970 Karachi 548.

Section 7(iv)(f)—**Suit for partition**—**Separate court-fee** is payable in respect of relief of taking accounts in a suit for partition. Such relief is assessable to court-fee under this clause. AIR 1936 Mad 562+AIR 1956 Nag 175+AIR 1952 Kutch 36.

Section 7(iv)(f)—**Suit under section 92, CPC**—A suit under section 92, Civil Procedure Code, for removal of trustees and for appointment of new trustees is not one for accounts merely because plaint contains a prayer for accounts. Such a suit falls under Schedule II, Article 17(iv). ('10) Ind Cas 92(DB) (Cal)+('99) 21 All 200 (DB).

Section 7(iv)(f)—**Appeal in suit for accounts**—Where the dispute in appeal relates to a right to accounts and to a decree of money found due on taking such accounts, this clause will apply but not where appeal does not relate to such dispute. The clause will not apply to appeals where a decree for a definite amount is prayed for or is challenged. AIR 1956 J & K 35 (DB).

Section 7(iv)(f)—**Appeal from preliminary decree**—An appeal from preliminary decree in a suit for accounts is liable to an *ad valorem* court-fee under this clause and not to fixed court-fee under Schedule II, Article 17, Clause (iii) or (vi). AIR 1914 Lah 507=1915 Pun Re No. 7 (DB).

v. for possession of land, buildings, or gardens—In suits for the possession of land, buildings or gardens—

- (a) according to the value of the subject-matter, and such value shall be deemed to be fifteen times the nett profits which have arisen from the land,

1. Paragraph v was substituted for the original paragraph by section 7(3) of the Court-fee (Bengal Amendment) Act, 1935 (Bengal Act VII of 1935).

building or garden during the year next before the date of presenting the plaint, or if the Court sees reason to think that such profits have been wrongly estimated, fifteen times such amount as the Court may assess as such profits or according to the market-value of the land, building or garden,

¹[whichever is greater];

Case-Law

Section 7(v)(a)—Prayer for possession, in a suit for specific performance of contract—Prayer for possession, in a suit for specific performance of contract, does not make the suit a suit for possession under clause (v) of section 7 of the Court-Fees Act. A contract for sale includes a stipulation not only for execution of the conveyance but also for delivery of possession. *Abdul Kader Bhuiya vs Kishori Lal Das* 7 DLR 157.

Section 7(v)(a)—"Subject-matter", what it refers to—The expression "subject-matter" in sub-clause (a) of clause v of section 7 of the Act, means a right sought to be established, a wrong to be remedied and defence asserted in justification of the wrong. *Rahman Ali vs M/S Banaras Silk Industries* 19 DLR 287.

(b) if, in the opinion of the Court, such profits are not readily ascertainable or assessable, or where there are no such profits, according to the market-value of the land, building or garden:

Explanation—In this paragraph "building" includes a house, out-house, stable, privy, urinal, shed, hut, wall and any other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatsoever.

1. The words within square brackets were substituted for the words "whichever is lower" by the Court-fee (East Bengal Amendment) Act, 1950 (East Bengal Act XIII of 1950).

Case-Law

Section 7(v)(b)—Suit for possession by mortgagee—A suit for possession by a usufructuary mortgagee comes within this paragraph. 1896 *Pun Re No. 1, p 1 (FB) Suit against tenants in possession.*

Section 7(v)(b)—Suit for possession by tenant—Where a suit for possession is between a landlord and tenant section 7(ix)(e) applies and not this section. *AIR 1954 Nag 124=ILR 1954 Nag 67.*

Section 7(v)(b)—Suit for possession of part of house—A suit for possession of a part of a house will be chargeable with a proportionate part of the court-fee that will be leviable in respect of a suit for the whole house. ('02) *I Law Bur Rul 303 (FB).*

Section 7(v)(b)—Land of which land revenue cannot be calculated—Where the suit land is a fractional share of a part of an "estate" which is separately assessed to revenue, the court-fee will have to be paid under clause (d) according to market-value and not according to revenue. 1880 *Pun Re No. 102 p 248 (DB)+AIR 1927 Mad 1002 (DB).*

Section 7(v)(b)—Land yielding no net profits—Where no net profits have arisen from the land during the year next before the suit, this clause requires the Court to estimate the land with reference to the value of similar land in the neighbourhood. 1980 *CLC 589+PLD 1951 Quetta 8+PLD 1962 BJ 33 (DB).*

Section 7(v)(b)—Valuation of subject-matter—In a suit for possession of a plot of land and for injunction for removal of buildings erected thereon, the valuation must be according to market-value of the land and the case of the buildings need not be taken into account. 4 *All 323 (FB)+AIR 1954 All 188.*

Section 7(v)(b)—Market value—The market value is the value on the date of the suit. *AIR 1928 Lah 852+AIR 1924 Lah 380.* In a suit for pre-emption the market value on the date of the sale will be the basis of valuation. *AIR 1924 Lah 380+AIR 1945 Oudh 135.*

Section 7(v)(b)—Pre-emption suit—The view that the value of a pre-emption suit is tentatively fixed is not acceptable. There is no provision of law to that effect. *PLD 1976 Lah 1.* In case of a suit for pre-emption where the land was cultivated during the year, prior to the institution of suit and had fetched profits therefrom Court-fee should be paid on 15 times the net profits, having arisen from the land during the year next before the date of presenting the plaint. *NLR 1982 Civ 88 (Lah).*

Section 7(v)(b)—Suit for religious property—A temple as such has no market-value and a suit for possession of a temple is chargeable with a fixed court-fee of Rs 10 under Schedule II, Article 17(vi). ('38 40 *Pun LR 113+AIR 1924 Mad 19=46 Mad 782 (FB)* (Article 17 of Schedule I corresponds to Article 11 of Schedule II in Punjab).

Section 7(v)(b)—Wakf property—In a suit brought by a Mutwalli to recover possession of wakf property alienated by a former Mutwalli, if there is no prayer for any declaration and the only prayer is for recovery of possession, the case does not come under section 7(iv)(c) but falls under section 7(v). *AIR 1954 Cal 101 (DB)*.

Section 7(v)(b)—Appeal by plaintiff—If the suit is dismissed and the plaintiff appeals repeating his claim for possession, the appeal will come under this paragraph. *1881 All WN 5 (DB)*.

Section 7(v)(b)—Decree for possession for limited period—Where a plaintiff is awarded possession but only for a limited period and he appeals against such limitation of his right, a court-fee of Rs 10 is sufficient on the appeal as he is only in the position of a person seeking a declaratory decree. *(11) 33 All 705*.

Section 7(v)(b)—Cross objections, Court-fee on—A memorandum of cross-objections is not included within the meaning of the word "suit" in section 7 and hence cross-objections claiming possession of immovable property are not liable to be charged with court-fee under this paragraph but under Schedule I, Article 1. *AIR 1925 All 119=47 All 89*.

¹**vi** to enforce a right of pre-emption—In suit to enforce a right of pre-emption according to the market-value of the land, building or garden in respect of which the right is claimed:

²[Provided that in an application to enforce a right of pre-emption under section 96 of the State Acquisition and Tenancy Act, 1950 (EB Act No. XXXVIII of 1951) or under section of the Non-Agricultural Tenancy Act, 1949 (EB Act No. XXIII

1. Paragraph vi was substituted for the original paragraph by section 7(4) of the Court-fees (Bengal Amendment) Act, 1935 (Bengal Act VII of 1935).

2. Inserted vide section 2(1)(b) of Act No. 36 of 1989.

of 1949), a fixed fee of an amount of one hundred taka shall be payable].

Explanation—In this paragraph, "building" has the same meaning as in paragraph v;";

Case-Law

Section 7(vi)—Improvement made by vendee—The value of improvement should also be taken into account in addition to value of the property for the purposes of court-fees. *AIR 1937 Lah 239+1912 Pun LR No. 184, p 580.*

Section 7(vi)—Market value—Where value for pre-emption and Court-fee is to be calculated on the market value of the property, the market value must be determined upon evidence. Recitals in a sale-deed as to the purchase price cannot be evidence against plaintiff. *1946 Oudh WN (IIC) 166 (DB).*

viA for partition and separate possession of a share of joint family property, etc—In suits for partition and separate possession of a share of joint family property or of a joint property, or to enforce a right to a share in any property on the ground that it is joint family property or joint property—

if the plaintiff has been excluded from possession of the property of which he claims to be a co-parcener or co-owner, according to the market-value of the share in respect of which the suit is instituted:

Case-Law

Section 7(viA)—Partition suit—Court-fee payable in partition suit—Plaintiff claiming joint possession in suit property and asking for a separate share of his—fixed court-fee is payable, but value of plaintiff's

1. Paragraph viA was inserted by section 7(5) of the Court-fees (Bengal Amendment) Act 1935 (Bengal Act VII of 1935).

share shall determine the forum both of the suit and appeal—If the object of the suit is to partition the entire property, value of entire property will determine the forum of the suit and appeal. *Khayertulle Mandal vs Kamalakanta Saha* 12 DLR 329.

Section 7(viA)—Suit for partition—Where the plaintiff is out of possession ad valorem court-fee to be paid. *Amiren Nessa vs Harun Mia* 35 DLR 11.

Section 7(viA)—'Out of possession' is not the same thing as 'excluded from possession'. Ad valorem court-fee must be paid only in case of exclusion or ouster of possession.—The present suit is not a case of exclusion of possession. *Amiren Nessa vs Harun Mia* 35 DLR 11

Section 7(viA)—Valuation for the purpose of Court's jurisdiction in a partition suit where plaintiff is in possession is determinable by the value of the plaintiff's share in the entire property. *Ajiruddin vs Rahman Fakir* 13 DLR (SC) 191.

vii. for interest of assignee of land revenue—In suits for the interest of an assignee of land revenue—fifteen times his net profits as such for the year next before the date of presenting the plaint:

viii. to set aside an attachment—In suits to set aside an attachment of land or of an interest in land or revenue—according to the amount for which the land or interest was attached:

viiiA. to set aside decrees—In suits to set aside decrees passed for ascertained amounts—according to the amounts of the decrees sought to be set aside, or where such decrees are not for any ascertained amounts, the fee payable shall be the same as paid on the plaints of the suits in which the questioned decrees were passed:

1. This new paragraph viiiA was inserted by East Bengal Act XIII of 1950, section 3(2).

Provided that, where such amount exceeds the value of land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest.

ix. to redeem—In suits against a mortgagee for the recovery of the property mortgaged,

to foreclose—and in suits by a mortgagee to foreclose the mortgage, or, where the mortgage is made by conditional sale, to have the sale declared absolute—

according to the principal money expressed to be secured by the instrument of mortgage:

Case-Law

Section 7(ix)—Suit for recovery of property mortgaged—A suit praying for “an order to deliver the mortgage deed with an endorsement of full satisfaction” is a suit to redeem the mortgage and is governed by this paragraph. *63 Cal 657*.

Section 7(ix)—Incidental reliefs—In a redemption suit the mere fact that plaintiff claims payment of any sum which might be found due to him on taking accounts does not alter the nature of the suit so as to necessitate the payment of additional court-fee. *AIR 1941 Mad 115+AIR 1951 Mad 187 (FB)*.

Section 7(ix)—Pledged goods—There is a distinction between a mortgage and a pledge. In the case of mortgage there is a remedy by way of foreclosure but in the case of a pledge the creditor’s only remedy is sale. To suit for redemption of a pledge, this para will not apply. To such a suit para 3 will apply. *AIR 1954 Madh B 6 (AIR 1949 Nag 368, Rel on) + AIR 1949 Nag 368=ILR 1949 Nag 243+AIR 1952 Madh B 196 (DB)*.

Section 7(ix)—Mode of valuation—In a suit for redemption the court-fee payable under this paragraph is according to the principal money expressed to be secured by the instrument of mortgage. *AIR 1926 Mad 667+14 Mad 480+AIR 1950 Kutch 42*.

Section 7(ix)—Several mortgage deeds—Where there is more than one mortgage in respect of the same property and the mortgagor sues to redeem it; Court-fee must be calculated upon the sum total of the principal money payable under all the deeds and not on the separate sums due under each deed, as all the deeds provide only one cause of action. 7 *Oudh Cas 152 (DB)*. (Section 17 does not apply to such a case).

- x. **for specific performance**—In suits for specific performance—
- (a) of a contract of sale—according to the amount of the consideration:
 - (b) of a contract of mortgage—according to the amount agreed to be secured :
 - (c) of a contract of lease—according to the aggregate amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term:
 - (d) of an award—according to the amount or value of the property in dispute:

Case-Law

Section 7(x)—Suit for specific performance of contract—For the purpose of court-fee in a suit for specific performance of contract in which the plaintiff's prayer is for a decree for execution of kabala, delivery of possession, and injunction it is governed by clause (x) of section 7 of the Court-Fees Act. *Abdul Kader Bhuiya vs Kishori Lal Das*, 7 DLR 157.

Section 7(x)—The issue whether the suit was governed by clause (v) or clause (x) of section 7 of the Court-fees Act was decided by the Court that it was governed by clause (v). The fact that thereafter the Court directed the parties to adduce evidence as to the value of the property in suit cannot cloud the decision of the Court that the suit was governed by a particular Clause(v), and hence an application under section 115 CPC, will lie to the High Court as against such decision. *Abdul Kader Bhuiya vs Kishori Lal Das* 7 DLR 157.

Section 7(x)—Scope—Only those contracts which are specified in the paragraph are covered by it, suits relating to other contracts for specific performance will not come under this paragraph. *AIR 1939 Cal 155 (DB)+AIR 1890 PJ 204.*

Section 7(x)—Execution of sale-deed—A suit to have a sale-deed executed and completed or for recovery of a sale-deed already executed is a suit for specific performance of contract of sale, though there is no prayer for possession of property sold. *AIR 1924 Lahore 439=5 Lahore 75 (DB).*

Section 7(x)—Suit for possession—A suit for possession against a seller on the basis of a completed sale is a suit for possession and not one for specific performance within the meaning of this paragraph although the suit contains a prayer that the defendant may be ordered to execute and have registered a sale-deed. *AIR 1920 Lahore 72.* Similarly, a suit directed against a third person not a party to the contract would be only a suit for possession. *AIR 1939 Mad 360=ILR 1939 Mad 367.*

Section 7(x)—Award, specific performance of—If plaintiff files an award with the plaint and prays that it be filed and enforced, the suit is for specific performance of an award. *4 Ind Cas 815 (DB) (Upp Bur).*

xi. between landlord and tenant—In the following suits between landlord and tenant :

- (a) for the delivery by a tenant of the counterpart of a lease,
- (b) to enhance the rent of a tenant having a right of occupancy,
- (c) for the delivery by a landlord of a lease,
- ¹(cc) for the recovery of immovable property from a tenant including a tenant holding over after the determination of a tenancy,
- (d) to contest a notice of ejectment,

¹ Clause (cc) was inserted by section 2(1) of the Court-fees Amendment) Act 1905 (VI of 1905).

Case-Law

Section 7(xi)—Tenant is not a licensee—Clause (xi) applicable in a suit against tenant but not applicable against a licensee—A licensee cannot be called a tenant and therefore where a suit has been instituted to eject a licensee clause (xi) which is applicable when a suit is brought to eject a tenant does not apply. *Rahmat Ali vs M/S Banares Silk Industries. 19 DLR 287.*

Sections 7(xi), 8C & 8D—Section 7(xi) of the Court-fees Act provides an objective standard for valuation of a suit for eviction of a monthly tenant by the landlord. In such a case, the subjective satisfaction of the plaintiff is of no avail. *Didar Ali and others vs Naziur Rahman 50 DLR 451.*

Section 7(xi)(d)—Suit challenging eviction notice—Mode of determining the value of the suit—When a suit is for challenging the notice of eviction the same should fall within section 9(xi)(d) of the Act and the suit should have been valued on the basis of calculation of the rent payable for one year. *Goalundo Fishing Industries vs Pakistan, 22 DLR 349.*

Section 7(xi)—Clause (cc)—A suit for ejectment against an under raiyat upon whom notice under section 49, Bengal Tenancy Act has been served is governed by this clause. *AIR 1932 Cal. 6 (DB).*

Section 7(xi)—Suit by tenant—A suit by a tenant for possession does not fall under the clause. *AIR 1937 Sind 93 (DB)+ILR 1931 Cal 333.* Similarly, a suit for possession by a subsequent lessee against a prior lessee who is holding over after the expiration of the term of the lease is governed not by this paragraph but by section 7(v). *AIR 1955 Andhra 140+AIR 1951 Bom 352+AIR 1958 AP 711 (DB).*

Section 7(xi)—Clause (d)—This clause applies to a suit by a tenant to contest a notice of ejectment. *See 11 Cal LR.*

(e) to recover the occupancy of ¹[immovable property] from which a tenant has been illegally ejected by the landlord, and

(f) for abatement of rent—

according to the amount of the rent of the ¹[immovable property] to which the suit refers, payable for the year next before the date of presenting the plaint.

xii. In suits not expressly provided for in this section—In suits not expressly provided for in this section, according to the value claimed, but such value shall not be less than a value which would attract a Court-fee of less than ~~(fifteen)~~³ [Taka].

two hundred (200)

Case-Law

Section 7, Clause (xii)—Plaint to eject a licensee is to bear court-fee as provided in section 7(xii). The plaintiff instituted a suit for recovery of possession of a shop in the New Market (Dacca) after evicting the defendant who occupies the premises as his licensee for tailoring work. The plaintiff who is himself a monthly tenant of the Provincial Government for the said premises asked the defendant to vacate the same and on his refusal, the present suit for possession has been instituted. The suit has been valued at Rs 120.00 for the purpose of court-fees.

Held: (Unanimous) In view of the case of the plaintiff, the instant case is governed by clause (xii) of section 7 of the Court-fees Act. Subject-matter in case of this clause is not the property for the possession of which the suit was instituted, but the right that vests in the plaintiff. *Rahmat Ali vs Banares Silk Industries. 19 DLR 287.*

1. These words were substituted for the word "land" by section 2(2), *ibid*.

2. This paragraph was added by Ordinance LII of 1962, section 2.

3. The word "Taka" was substituted by Act VIII of 1973, section 3 and 2nd Schedule (with effect from 26-3-71) for "rupees".

Section 7, Clause (xii)—Expression ‘according to value claimed and expressly provided for’ explained—The expression “according to the value claimed” in clause (xii) of section 7 added by the amending Ordinance No. III of 1962 clearly indicates that the Court-fee will be paid according to the value of the right sought to be enforced and the case before us will clearly come under this provision.

The words “expressly provided for” indicate that there must not only be a provision but one in which the law will be laid down in clear and unambiguous terms.

The divergence of opinion which resulted from failure of the legislature to express itself clearly in clause (v) of section has led the legislature in Pakistan to add clause (xii) so that the suits which do not come under any of the earlier clauses will be governed by this clause.

Abdullah J—The case of the plaintiff with limited interest seeking to evict a licensee is not covered by any of the provisions enumerated in section 7 specifically, but to which new added clause (xii) of section 7 of the Court-fee Act is applicable. *Rahmat Ali vs Banares Silk Industries*. 19 DLR 287.

8. Fee on memorandum of appeal against order relating to compensation—The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the appellant.

Case-Law

Section 8—Article 1 of Schedule I and Article 11 of Schedule II—Memo. of appeal from an award of an Arbitrator claiming compensation for acquisition of land, the amount in appeal claimed being the difference between the amount awarded and the amount claimed—Memo of appeal to bear *ad valorem* court-fees in terms of Article 1 of Schedule I as payment of *ad valorem* court-fee has been imposed in terms by section 8 itself: *Mrs Momtaz Mallik vs The Taxing Officer*, 20 DLR 599.

Article I of Schedule I, Article 11 of Schedule II—Award regarding claim of compensation made by Arbitrator under the provisions of the East Bengal Emergency Requisition of Property Act, it (award) being

neither a decree nor an order having the force of a decree—What court-fee payable on a memorandum of appeal from such award, the amount of compensation claimed in the appeal being the difference between the amount awarded and the amount claimed by the appellant as specially referred to in section 8—Whether *ad valorem* Court-fee is payable in terms of charging article 1 of Schedule I or a fixed court-fee payable in terms of charging article 11 of Schedule II of the Court-fees Act; (Majority judgment: Fixed court-fee under Article 11 Schedule II payable: Minority view—*ad valorem* court-fee under Article 1 of Schedule I payable.)

The excepting word “not otherwise provided in this Act” in Article 1, Schedule I relate to appeals contemplated by section 8—When article 11 of Schedule II specially is applicable to memo. of appeal which is not from a decree or the order having the force of a decree. It is this article which falls within the purview of the expression “not otherwise provided” and therefore *ad valorem* court-fee in terms of article 1 of the Schedule I of the Court-fee Act for appeals envisaged under section 8 not payable. *Mrs Momtaz Mallik vs The Taxing Officer, 20 DLR 599.*

Section 8—Strictly speaking the provision of section 8 of the Court-fees Act on the question of “the difference between the amount awarded and the amount claimed” does not arise in the case of Requisition Act because nowhere in the latter Act the person concerned has been required to state the amount claimed by him. *Mrs Momtaz Mallik vs The Taxing Officer, 20 DLR 599.*

Section 8—Under section 9 of Land Acquisition Act, a person interested in the land is required to state the amount of compensation claimed by him. But the East Bengal Act nowhere requires the person interested in the land to state the amount of compensation claimed by him. Thus, the East Bengal Act not having required the person interested to state the amount of compensation claimed by him, there may not be an occasion for determination of the difference, between the amount of compensation claimed and the amount awarded so as to apply section 8 of the Court-fees Act, unless the person interested goes beyond the scope of the statute and, of his own accord, claims a definite sum by way of compensation.

An award under the East Bengal (Emergency) Requisition of Property Act not being a decree is not a property and is not therefore capable of being assigned or transferred. *Mrs Momtaz Mallik vs The Taxing Officer, 20 DLR 599.*

Section 8—The court has a right to correct valuation if a wrong valuation is put on the plaint. *Nagendra N Sree Roy vs Saiyadali Jamadar 8 DLR 100.*

Section 8 and Article 11 of Schedule II—The provision of the law to be carefully examined. The question of interpretation of the provisions of section 8 and article 11 of the Schedule II of the Court-fees Act is not one which can be said to be free from difficulty. On such a question relating to the court-fee to be paid in respect of a document to be used in the High Court the Supreme Court is entitled to the benefit of the views of the High Court.—*Mrs Momtaz Mallik vs The Taxing Officer(Registrar) High Court. 19 DLR (SC) 1.*

¹8A. Statement of particulars of subject-matter of suits and Plaintiff's valuation thereof—In every suit in which an *ad valorem* court-fee is payable under this Act on the plaint, the plaintiff shall file with the plaint a statement of particulars of the subject-matter of the suit and his own valuation thereof unless such particulars and the valuation are contained in the plaint. The statement shall be in such form and shall contain such particulars as may be prescribed by the ²[Government] by notification in the ³[Official Gazette]. In every such suit the plaintiff shall also, if the Court so directs, file a duplicate copy of the plaint and of the said statement.

ludh Nanium Nazim Tamee

18B. Procedure where insufficient Court-fee is filed on plaint or memorandum of appeal—(1) In every suit in which a court-fee is payable under this Act on the plaint or memorandum of appeal the Court shall, ⁴[on the date fixed for appearance of the opposite party or as soon as may be

1. Sections 8A, 8B, 8C, 8D, 8E and 8F were inserted by section 8 of the Court-fees (Bengal Amendment) Act, 1935 (Bengal Act VII of 1935).

2. This word was substituted for the words "Provincial Government" by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973), section 3 and 2nd Schedule (with effect from 26-3-71).

3. These words were substituted for the words "Calcutta Gazette" by Government of India (Adaptation of Indian Laws) Order, 1937.

4. These words were substituted for the words "as soon as may be after the registration of the plaint or memorandum of appeal" by section 3 of the Court-fees (Bengal Third Amendment) Act, 1935 (Bengal Act I of 1936).

thereafter], and in every case before proceeding to deliver judgment, record a finding whether a sufficient court-fee has been paid.

Case-Law

Section 8B—Non compliance with the provisions of the section does not render the decree of the Court void—The provisions of section 8B are more or less procedural to be followed by a Court when it finds that sufficient court-fee has not been paid. Non-compliance with the provision constitutes an irregular or erroneous exercise of jurisdiction and does not take away the jurisdiction of a Court and render its decision void. *Sardar Menhajuddin Ahmed vs Sudhir K Sinha*. 10 DLR 621=8 PLR (Dac) 454.

Section 8B—Court competent to enter into the matter of court-fees after appearance of the parties and framing of issues.

Section 8B of the Act provides for the procedure where insufficient court-fee is filed on plaint or memorandum of appeal and in view of such statutory provisions the trial Court was competent to go into the matter of court-fees after the appearance of the parties and framing of the necessary issues therefor and then determining it in accordance with law. *Abdul Hamid vs Dr Sadeque Ali Ahmed*, 21 DLR 507.

Section 8(b)—In a suit for declaration of title and confirmation of possession the plaintiff is bound to pay ad valorem Court-fee. *Sufia Akhtar Khanam vs Salema Akhtar Khanam* 46 DLR 198.

(2) If the Court records a finding that an insufficient court-fee has been paid on the plaint or memorandum of appeal the Court shall —

- (a) stay all further proceedings in the suit until it has determined the proper amount of such court-fee payable and the plaintiff or the appellant, as the case may be, has paid such amount or until the date referred to in clause (b), as the case may be:

Provided that if the plaintiff or appellant gives, within such time as the Court may allow, security, to the satisfaction of the Court, or the payment of any additional amount for which he may be found liable the Court may proceed with the suit,

(b) fix a date before which the plaintiff or appellant shall pay the amount of court-fee due from him, as determined by the Court under clause (a).

(3) If the plaintiff or appellant fails to give the security referred to in clause (a) of sub-section (2) or to pay the amount referred to in clause (b) of that sub-section within the time allowed, or before the date fixed, by the Court, as the case may be, the suit shall be dismissed.

Case-Law

Section 8B(2)(3)—Dismissal of a suit under section 8B(3) for non-payment of court-fees is not the same thing as rejection of plaint and such dismissal does not amount to a decree as defined in section 2(2) CPC and therefore for dismissal under section 8B(3) no appeal would lie there being no adjudication of rights of the parties involved.

When the Munsif characterised her dismissal of the suit u/s. 8B(3) as a rejection of the plaint that will not render an order as one of decree and hence no appeal would lie against such order of the Munsif. *Monindra Nath Chowdhury vs Rahmat Ali Goldar, 31 DLR 180.*

18C. Inquiry as to valuation of suits—If the Court is of opinion that the subject-matter of any suit has been wrongly valued it may revise the valuation and determine the correct valuation and may hold such inquiry as it thinks fit for such purpose.

1. Sections 8A, 8B, 8C, 8D, 8E and 8F were inserted by section 8 of the Court-fees (Bengal Amendment) Act, 1935 (Bengal Act VII of 1935).

Case-Law

Section 8C—Not applicable in case under section 7(iv)(c)—Section 8C gives the court power to revise the valuation of any suit. But that does not improve matters as regards cases dealt with in section 7(iv)(c) inasmuch as it does not indicate any method or principle by which the court can revise the plaintiff's valuation in cases where there is no objective standard. *Star Film Distributors vs Sergam Pictures*. 6 DLR 466.

✓ **Section 8C**—Duty of the Court to hold inquiry to determine correct valuation where objective standard of valuation is available. *Nawab Askari Jute Mills Ltd vs Giasuddin Ahmed* 41 DLR 144. suit

Section 8C—Deciding a preliminary issue on valuation—in the present case the objective standard of valuation being available and the question of jurisdiction being involved, the munsif committed an error of law in not deciding the question of valuation and in putting off the matter to be decided with other issues. *Shaukat Hossain vs Abdul Hakim* 42 DLR 508.

Section 8C—Determination of valuation of the suit—The court is to hold an enquiry and determine the valuation where there is objective standard of valuation of the suit. The objective standard of valuation is the consideration money of the kabala or the market price. There is no embargo on the enquiry to be made on the valuation in the absence of written statement in a suit where objection has been raised regarding the valuation and where objective standard for valuation is available. The enquiry is to be made after giving sufficient opportunity to the concerned parties. *Ahmed Kabir vs Haji Mazahar Ahmed*. 43 DLR 500.

Section 8C—Valuation of suit—Issue regarding valuation—Acceptance of valuation given by the plaintiff—Whether Court is bound to hold enquiry to revise the valuation given by the plaintiff while deciding issue regarding valuation when the trial of the suit already commenced without any evidence merely relying on the valuation in the sale deeds filed. The Court is not bound to hold enquiry regarding valuation on the mere seeking of the defendants and the Court in its discretion may accept the valuation given by the plaintiff in the plaint if the same appears to be reasonable to the Court. In a summary enquiry regarding valuation unless the Court finds that the valuation given by the plaintiff is grossly undervalued the Court in its discretion does not interfere. *Abul (Md) Kashem vs Ashrafuzzaman* 43 DLR 596.

Section 8C—Substance to be looked at—In determining the nature of a suit for the purpose of court-fee, the court should look to the substance rather than to the form of the plaint. *Kumudini Welfare Trust vs Pakistan 11 DLR 57*.

Section 8C—Where it is found that the real nature of the suit is not a declaratory one with consequential relief but in effect a substantive relief has been claimed and the plaintiff must pay *ad valorem* court-fee. *Kumudini Welfare Trust vs Pakistan 11 DLR 57*.

Section 8C—A suit for setting aside a decree is a suit for substantive relief. *Kumudini Welfare Trust vs Pakistan 11 DLR 57*.

Section 8C—When court can correct valuation—The words “any suit” occurring in section 8C, Court-Fees Act, include a suit governed by section 7(iv)(c). The Court in such a suit is not bound by the valuation put by the plaintiff, but it can make an enquiry under section 8C and if there is an objective standard available, correct the valuation according to that standard. *Nagendra N Sen Roy vs Saiyadali Jamadar. 8 DLR 100*.

Section 8C—Provisions of section 8C of the Court-fees Act are independent of section 9 of the Suits Valuation Act—The Court is authorised under section 8C of the Court-fees Act to hold an enquiry as to valuation of any suit and to assess the same. This is absolutely an independent power consciously given by the legislature to the court and the legislature must be presumed to have in its mind the provision of section 9 of the Suits Valuation Act. Section 9 of the Suits Valuation Act is not only an independent section but is also contained in a different Act. *Government of East Pakistan vs Maharaja Kirit Bikram Kishore Deb. 22 DLR 77*.

Section 8C—Where an objection is raised by the defendant as to the valuation of the relief sought, it is the duty of the Court under section 8C of the Court-fees Act to hold an enquiry and to determine the correct valuation where an objective standard of valuation is available.

In the present case the suit being for declaration of title in land, an objective standard for valuation of the suit is available and therefore, plaintiff's valuation of the suit may be revised under section 8 of the Court-fees Act. *Karamat Ali Bepari vs Province of East Pakistan 22 DLR 616*.

Section 8C—Anomalies in the Act—Safeguard in construing the Act—There are instances of anomalies in the Court-fees Act. For

example, an appeal to the High Court under a special statute against the decision of a statutory functionary like the Arbitrator, as in this case, does not come under any of the jurisdictions of the High Court mentioned in section 4 of the Court-fees Act, inasmuch as the Arbitrator is a *persona designata* and does not function as a Court.

There being anomalies in the Court-fees Act in construing a particular provision of that Act all other provisions thereof should be taken into consideration, so that the anomaly, if any, may be reconciled. *Mr Momtaz Mallik vs Taxing Officer*, 20 DLR 601.

Section 8C—Payment of ad valorem court-fee cannot be insisted for investigation into the question of fees by appointing a pleader commissioner. *Mahammad Abdul Nasir vs People's Republic of Bangladesh* 28 DLR 392.

Section 8C—**Question of payment of ad valorem court-fee is to be determined at the time of trial**—Even in a suit for simple declaration the Court is competent to issue commission, if necessary. Therefore, this cannot be a valid ground for directing the plaintiffs to pay *ad valorem* court-fee. The question whether the plaintiffs are required to pay *ad valorem* court-fee, is to be determined at the trial; before that it is not proper for the court to direct the plaintiffs to pay *ad valorem* court-fee. *Mohammad Abdul Nasir vs People's Republic of Bangladesh* 28 DLR 392.

8D. Investigation to ascertain proper valuation—(1) For the purpose of an inquiry under section 8C the Court may depute, or issue a commission to any suitable person to make such local or other investigation as may be necessary and to report thereon to the Court. Such report and any evidence recorded by such person shall be evidence in the enquiry.

(2) The Court may, from time to time, direct such party to the suit as it thinks fit to deposit such sum as the court thinks reasonable as the costs of the inquiry, and if the costs are not deposited within such time as the Court shall fix,

1. Sections 8A, 8B, 8C, 8D, 8E and 8F were inserted by section 8 of the Court-fees (Bengal Amendment) Act, 1935 (Bengal Act VII of 1935).

may, notwithstanding anything contained in any other Act, dismiss the suit if such party is the plaintiff or the appellant and, in any other case, may recover the costs as a public demand.

8E. Power of persons making inquiry under sections 8C and 8D—(1) The Court, when making an inquiry under section 8C and any person making an investigation under section 8D shall have, respectively, for the purpose of such inquiry or investigation, the powers vested in a Court under the Code of Civil Procedure, 1908, in respect of the following matters, namely :

- (a) enforcing the attendance of any person and examining him on oath or affirmation;
- (b) compelling the production of document or material objects; and
- (c) issuing commissions for the examination of witnesses.

(2) An inquiry or investigation referred to in sub-section (1) shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the² * * * Penal Code.

8F. Costs of inquiry as to valuation and refund of excess fee—If in the result of an inquiry under section 8C the Court finds that the subject-matter of the suit has been undervalued the Court may order the party responsible for the undervaluation to pay all or any part of the costs of the inquiry.

1. Sections 8A, 8B, 8C, 8D, 8E and 8F were inserted by section 8 of the Court-fees (Bengal Amendment) Act, 1935 (Bengal Act VII of 1935).

2. The word "Pakistan" was omitted by Act VIII of 1973, section 3 & 2nd Schedule (with effect from 26-3-71).

If in the result of such inquiry the Court finds that the subject-matter of the suit has not been undervalued the Court may, in its discretion, order that all or any part of such costs shall be paid by the ¹[Government] or by any party to the suit at whose instance the inquiry has been undertaken, and if any amount exceeding the proper amount of fee has been paid shall refund the excess amount so paid.

Case-Law

Section—8 ‘Order’—The word “Order” in the section means an order as defined in section 2(14), Civil PC AIR 1945 Bom 348=ILR 1946 Bom 707. The section applies to appeals against every order relating to compensation, whether such an order amounts to a decree or not. AIR 1932 Cal 316 (Schedule II, Article 11 does not apply to such an appeal).

9. [Power to ascertain net profits or market-value.]—Rep by Section 9 of the Court-fees (Bengal Amendment) Act, 1935 (Ben Act VII of 1935).

Case-Law

Section 9—Inquiry—The trend of sections 9 and 10 indicates that it is not incumbent upon the Court to order investigation for ascertaining the net profits or the market value of the property because such investigation may not be required in certain cases. 1983 CLC 109=NLR 1982 Civ 326 (Lahore)+PLD 1981 SC 371=PLJ 1981 SC 806=NLR 1981 Civ 512.

Section 9—If a court suspects that assessment of nett profits is wrong it may appoint a local commissioner to make a report on the matter and if the report shows that nett profits are under-assessed, the court shall compel the plaintiff to rectify the incorrect valuation and make up the deficiency in court-fee. PLD 1983 Lahore 215 (DB).

Section 9—Incorrect valuation. The Court can act under this section where a party has incorrectly valued the subject-matter of the suit;

1. This word was substituted for the words “Provincial Government” by Act VIII of 1973, section an 2nd Schedule (with effect from 26-3-71).

not only under-valuation but also over-valuation is covered by the section. *5 Bengal LR (App) 6 (DB)*.

10. [Procedure where nett profits or market value wrongly estimated]—Rep by section 9 of the Court-fees (Bengal Amendment) Act, 1935 (Ben Act VII of 1935).

Case-Law

Section 10—Dismissal of suit for deficiency in Court-fee—A plaint or a memo of appeal cannot be treated as properly presented so long as proper court-fee is not paid. *PLJ 1981 Lahore 181+PLD 1972 Karachi 103*.

Section 10—Deficiency to be made good must be stated—When a Court does not specify what are the requisite stamp papers which a plaintiff has to supply but leaves the matter in general terms to make up whatever the deficiency in the court-fee may be, in the hands of the plaintiff, it cannot invoke its powers under Order VII, rule 11, CPC because there is no failure to comply with any definite direction. *PLJ 1980 Lahore 694=1980 CLC 186 (DB)*.

Section 10—Appeal against order of dismissal. Valuation of appeal on dismissal of suit under this section would be value determined by the Court and not valuation given in the plaint. *AIR 1938 Lahore 311*.

Section 10—Order 7, Rule 11, CPC and this section—Order 7, rule 11 Civil Procedure Code and section 10, Court-fees Act, apply to different stages of the suit; the former applying before registration of plaint and the latter applying after registration of plaint. *AIR 1920 Patna 656 (DB)+27 ALL 197 (DB)+2 Mad 308 (DB)*.

Section 10—Valuation exceeding pecuniary jurisdiction of Court—If valuation determined by the Court after investigation exceeds the pecuniary jurisdiction of the Court, the Court must return the plaint for presentation to a proper Court. *AIR 1933 Nag 312+AIR 1931 Mad 69 (Held, decision in AIR 1924 Mad 646 was not correct)+57 Mad L Jour (NRC) 33*.

Section 10—Powers of Appellate Court—A memo of appeal cannot be treated as properly presented so long as proper court-fee is not paid, therefore, an appeal cannot be taken to have been instituted until the deficiency in Court-fee is made good. *PLJ 1981 Lahore 181+PLD 1972 Karachi 103 (DB)*.

Section 10—Refund of Court-fees—It has to be noted that refund of court-fee is provided for only in those cases where there has been an error in computation owing to miscalculation of the nett profits or market value. It can have no application where an appeal properly valued is automatically dismissed as a result of a statutory provision. *AIR 1953 All 184 (DB)*.

Section 10—Appeal. An Appellate Court can reject a memorandum of appeal under Order 7, Rule 11, read with section 107, CPC *AIR 1954 Bom 43+AIR 1937 All 280*, but it cannot reject it on the ground that the Court-fee on the plaint in the trial Court has not been paid by the plaintiff-appellant. *AIR 1937 All 280=ILR 1937 All 484*.

Section 10—Review. Where the Court cannot restore the plaint to the file it can treat an application for restoration as a fresh plaint under Order 7, rule 13. *AIR 1955 Hyd 156 (DB)+AIR 1935 All 985*.

¹11. Procedure in suits for mesne profits or accounts when amount found due exceeds amount claimed.—¹[1] Where, in any suit for mesne profits or for land and mesne profits or for an account, the fee which would have been payable if the suit had comprised the whole of the relief to which the Court finds the plaintiff to be entitled exceeds the fee actually paid, the Court shall require the plaintiff to pay an additional fee equal to the amount of the excess, and if such additional fee is not paid within such time as the Court may fix, the suit, or if a decree has previously been passed therein, so much of the claim as has not been so decreed, shall be dismissed:

1. Section 11 was substituted by Ben Act VII of 1935 and subsequently this section was renumbered as sub-section (1) of that section and sub-section (2) was added by Ordinance LII of 1962.

Provided that, where the additional fee is payable in respect of a portion of the claim which can be relinquished, that portion only shall be dismissed.

¹(2) **Refund where amount of decree is less than amount claimed**—Where in any such suit as is referred to in sub-section (1) the Court-fee paid is found to be in excess of the amount of fee which would be payable if the suit had been valued at the amount decreed, the decree-holder shall be entitled to the refund to the excess of Court-fee paid by him.

Case-Law

Section 11—Applicability—A suit for damages is not covered by it. In such a case the plaintiff can enter in his plaint approximate estimate of damages and offer to pay additional court-fee, if larger sum is found due, before the decree is passed. *AIR 1957 Mad 297*.

Section 11—Under-valuation due to mistake or inadvertence of Court—Cases under this section would be cases in which insufficiently stamped plaint is received or filed or used owing to mistake or inadvertence of Court. *(90) 12 All 129 (FB) (Obiter)*.

Section 11—Appeal—If the defendant challenges a decree for accounts, *ad valorem* court-fee has to be paid on the decretal amount instead of court-fee on the tentative value fixed by the plaintiff in the suit. *PLD 1970 Quetta 82 (DB)*.

Section 11—Para I and para II—difference between—The procedure provided for in the two paragraphs is different. Under the second paragraph the suit itself is to be dismissed if the additional Court-fee is not paid within the time allowed by the Court. But under the first paragraph, the suit is not to be dismissed. It is only the execution of the decree that will remain in abeyance till extra court-fee is paid. *AIR 1933 Nag 307 +AIR 1920 Mad 970 (DB)* (Under Section 11, Court-fees Act, in case of suit for partition and mesne profits, term “decree” should be taken to refer to final, not interim decree in suit)+*AIR 1954 Mad 170 (DB)*.

1. Section 11 was substituted by Ben Act VII of 1935 and subsequently this section was renumbered as sub-section (1) of that section and sub-section (2) was added by Ordinance LII of 1962.

Section 11—Decree must not be postponed till payment of Court-fee.—A Court is not required to postpone passing or drawing up of a decree till the court-fee is paid. *AIR 1942 Patna 410=21 Patna 366 (DB)+AIR 1953 Nag 307.*

Section 11—Appellate Court, power of—An Appellate Court cannot extend time fixed by the lower Court. *AIR 1916 Mad 224 (DB).*

Section 11—Suit for mesne profits—Section 11 of the Court-fees Act provides a procedure for payment of court-fee in a suit for mesne profits or for land and mesne profits or account when the amount found due exceeds the amount claimed in the suit. *PLD 1962 Dacca 214=13 DLR 836=PLR 1961 Dacca 424.*

Section 11—Partition suit—When a defendant who is given a share in partition applies for execution of the decree, he is not bound to pay any Court-fee under this section. *(05) 29 Bom 79(DB)*

Section 11—Future mesne profits—A Court can levy extra court-fee under this section in respect of future mesne profits decreed under Order 20, rule 12. *AIR 1946 Sind 19=ILR 1945 Karachi 310+AIR 1938 Mad 727 (DB)* (Claim for mesne profits, in suit, past or future—section 11(1) would apply to the same if decree is passed in respect of future mesne profits)+*AIR 1930 Rangoon 246 (DB).*

Section 11—Suit on mortgage—In suit for redemption of mortgage plaintiff is not bound to pay any Court-fee in respect of surplus profits decreed to him. *AIR 1929 Nag 1=24 Nag LR 197 (DB).*

12. Decision of questions as to valuation—*i.* Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this chapter on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit.

ii. But whenever any such suit comes before a Court of appeal, reference or revision, if such Court considers that the said question has been wrongly decided to the detriment of the revenue, it shall require the party by whom such fee has

been paid to pay so much additional fee as would have been payable had the question been rightly decided, ¹[and thereafter :

- (a) if the party required to pay is the appellant or petitioner, the provisions of sub-sections (2) and (3) of section 8B shall, so far as may be; apply;
- (b) if the party required to pay is the respondent or the opposite party, the provisions of sub-section (2) of section 8B shall, so far as may be; apply, and if such party fails to pay the fee required before the date fixed by the Court, the Court shall recover the amount of such fee from him as a public demand:

Explanation—For the purposes of this section a question relating to the classification of any suit for the purpose of section 7 shall not be deemed to be a question relating to valuation.]

Case-Law

Section 12—Purpose of section 12 of the Act was evidently framed for fiscal purposes, as is manifest from the second clause of the section, which shows how a Court of appeal may review the decision of the primary Court upon a question of this character, only when there has been a loss of the public revenue. It is fairly clear that the legislature never intended that the decision of a question of jurisdiction should be final under section 12 of the Court-fees Act. *Nogendra N Sen Roy vs Saiyad Ali Jamadar*, 8 DLR 100.

Section 12—High Court can revise the lower Court's decision—Section 12 of the Court-Fees Act makes the decision of the Munsif final. But this finality does not take away the revisional powers of the High Court to interfere under section 115 CP Code. *Star Film Distributors vs Sivgom Pictures*, 6 DLR 466.

1. These words substituted for the words "and the provisions of section 10, paragraph ii, shall apply" by section 11 of the Court-fees (Bengal Amendment) Act, 1935 (Bengal Act VII of 1935).

Section 12—Where the decision of trial Court is based on proper evidence and good reasons, the findings of the trial Court cannot be disturbed by Superior Court. *AIR 1935 ALL 849*.

Section 12—Written statement—The section applies not only to a plaint or appeal but also to a written statement claiming a set off. *AIR 1936 Cal 277 (DB)+AIR 1926 Bom 343 (DB)*.

Section 12—'Ex parte decision'—Ordinarily an *ex parte* decision is not a decision as contemplated by sub-section (i). *AIR 1942 Oudh 385+AIR 1957 AP 516+AIR 1954 Patna 406 (DB)+AIR 1941 Nag 217 (AIR 1933 Patna 234 followed)+20 All 11 (FB)*.

Section 12—Finality of decision under sub-section (i)—According to section 12 of the Court-Fees Act every question relating to valuation for the purpose of court-fee has to be decided by the Court of first instance and its decision has the finality as between the parties to the suit. *PLD 1982 BJ 38+PLD 1975 Karachi 59*.

Section 12—No finality against state—The section is clearly designed in the interest of revenue as is evident from the fact that while it makes a decision as to valuation final if it is adverse to the litigant, it allows the decision to be interfered with if it is against the State. *PLD 1975 Karachi 59+AIR 1918 PC 188=43 Bom 507=46 India App 24*.

Section 12—Appealability of order as to court-fee—An order assessing Court-fee on a plaint or memorandum of appeal or assessing the value of a suit or appeal for purposes of court-fee is not appealable. *AIR 1927 Lahore 775 (DB)+AIR 1914 Lahore 153=1914 Run. Re. No. 80 (DB)+AIR 1943 Nag 315=ILR 1943 Nag 802+AIR 1936 Cal 784 (DB)*. But where the lower court has acted in the matter without jurisdiction, the High Court may interfere in the exercise of its extraordinary jurisdiction. *27 Bom, 140 (DB)*.

Section 12—Order not under sub-section (1)—Where an order does not fall under sub-section (i) it can always be challenged in appeal. *1887 Bom PJ 36 (DB)*. (Question whether suit admits of valuation—Appeal lies against an order of dismissal).

Section 12—Memo of appeal—A Court cannot reject a memo of appeal on the ground that the court-fee on the plaint in the trial Court has not been paid by the plaintiff-appellant. *AIR 1937 All 280=ILLR 1937 All 484*.

Section 12—Revision against order as to court-fee—The duty of fixing the court-fee is cast by law on the trial Court and the trial Court's decision is ordinarily final. *PLD 1982 BJ 38+AIR 1942 Mad 445+AIR 1954 Trav-Co 178 (FB)*.

Section 12—Revision by plaintiff—An order as to court-fee which is unfavourable to the plaintiff is not open to revision. *AIR 1942 Pesh 23* (Order requiring payment of more Court-fee is merely an interlocutory order and does not amount to the decision of a case)+*ILR 1937 Lahore 430*.

Section 12—Revision by defendant—Where an order as to court-fee is favourable to the plaintiff, an application for revision does not lie. *AIR 1943 Nag 315+AIR 1938 Nag 122 (DB)+AIR 1938 Patna 22 (FB)*.

Section 12—No revision lies against an order of Court refusing to adjourn a case in order to enable party to pay court-fee. *AIR 1923 All 118=45 All 218 (DB)*.

Section 12—Dismissal of appeal for non-payment of Court-fee—A revision lies where an appeal is dismissed for failure to pay additional court-fees called for. *1979 LN 272 (Lahore)+AIR 1936 Pesh 140*.

Section 12—Reference to High Court—The Court in which an appeal is filed cannot refer the question as to the proper court-fee payable on such appeal to the High Court. Order 46, rule 1 of the Civil Procedure Code does not contemplate a reference on such a point. *1906 All WN 180 (DB)*.

Section 12—Effect of making good Court-fee—The combined effect of sections 12 and 28 of the Court-fees Act, 1870 is that if indeed there is any deficiency in the court-fee leviable in a suit, it can be ordered to be made good even in second appeal, and when that is done, the plaint shall be taken to have been properly stamped right from the beginning. *PLJ 1983 SC 150*.

Section 12—Revisional Court, power of—The power of interference under sub-section (ii) in cases of insufficiency of court-fee is conferred on a Court of revision. *AIR 1915 Cal 622 (DB)*.

Section 12—Review of order as to court-fee—An order under sub-section (i) can be altered on an application for review. *AIR 1936 Pesh 213+AIR 1950 All 237 (DB)+AIR 1925 Patna 47 (DB)*.

Section 12—An objection as to insufficiency of Court-fee paid on the plaint or memorandum of appeal can be raised at any time before the case is finally disposed of by the Court. *AIR 1933 Patna 234=12 Patna 694*.

Section 12—Decision on objection—Failure to decide the question of correct court-fee as a preliminary issue is merely an irregularity and does not vitiate the proceeding. *PLJ 1979 Lahore 486+PLD 1975 Lahore 886+PLJ 1976 Lahore 305.*

Section 12—Admission regarding Court-fee—An admission by a party on the question of computation of Court-fee is not conclusive against him. *AIR 1928 Cal 55 (DB)*. Similarly, an erroneous admission by the counsel of an appellant that the appeal was understamped does not bind him. *AIR 1929 Lahore 879 (DB)*.

13. Refund of fee paid on memorandum of appeal—If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the ¹[Code of Civil Procedure, 1908], is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in ²[Order XLI, Rule 23 of the First Schedule to the said Code] for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate, authorising him to receive back from the Collector the full amount of fee paid on the memorandum of appeal.

Provided that if, in the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorise the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

Case-Law

Section 13—Court-Fee cannot be refunded if appeal is found incompetent—When after an objection as to the maintainability of the

1. The words, figures and comma within square brackets were substituted for the words "Code of Civil Procedure" by East Pakistan Ordinance XIII of 1962.

2. The words, figures and comma within brackets were substituted for the words and figures "section 351 of the same Code," *Ibid*.

second appeal is allowed to be raised and to be argued and it is finally held that it did not lie, the Court-fee paid on it serves its purpose and cannot be refunded. *AIR 1957 All 734*.

Section 13—Inherent power of Court to refund Court-fee—Even in those cases which do not come within the scope of sections 13, 14 and 15 of the Court-fees Act a Court has inherent power in certain circumstances to grant refund of the court-fee already paid. *1980 CLC 1775(2)=PLJ 1980 Karachi 293+PLJ 1978 Karachi 293 is not good law*.

Section 13—Court-fee paid according to law—No question of refunding Court-fee under inherent powers can arise where the same had been properly paid for instituting a proceeding. *PLD 1975 Karachi 178=PLJ 1975 Karachi 151 (DB)*.

Section 13—Application to Revenue Authorities for 'ex gratia' refund—Where an applicant for succession certificate has included an unnecessary item in his application and he has paid court-fee on it, the Court cannot order refund of the Court-fee but a certificate can be issued, if one is necessary, as to the exact circumstances under which the relief asked for originally, has turned out to be unnecessary, so that the petitioner may apply to the Government for a refund *ex gratia*. *AIR 1955 Mad 681=ILR 1955 Mad 325*. It has however to be noted that in the absence of express statutory provisions, a certificate issued under this section has only recommendatory force and revenue authorities are not bound to grant refund. *AIR 1933 Lahore 351 (DB)+AIR 1916 Rangoon 352+AIR 1934 Mad 84 (DB)*.

Section 13—Application for refund—Where an application for refund is made beyond the time fixed by standing orders, refund of court-fees will not be ordered under inherent powers. *AIR 1949 Mad 895*.

Section 13—Order that Court may make—Where the Court finds that a party has paid excess court-fee by mistake, the Court has no powers to directly order the Government to refund the amount of excess court-fees. In such cases according to precedents Court issues a certificate to the party who has paid excess court-fee to enable him to apply to the Revenue Authority for refund of the same. *1980 CLC 1775 (2)=PLJ 1980 Karachi 293*.

Section 13—Remand—Provision for refund of court-fees under this section is mandatory. *AIR 1933 Lahore 135+AIR 1930 Lahore 441+AIR 1926 Nag 265*. Thus where there is a remand for fresh trial under Order

41, Rule 23, the appellate Court must order refund of court-fees paid on memorandum of appeal. *AIR 1933 Lahore 47+AIR 1937 All 465+AIR 1956 Punjab 215 (DB)*.

Section 13—The Court has no inherent power to order refund of court-fees paid on memorandum of appeal where remand order is not based on any of the grounds mentioned under Order 41, Rule 23. *AIR 1935 Pesh 8+AIR 1933 Pesh 101 (DB)+AIR 1927 Lahore 886*.

Section 13—Partial remand—If an order of remand covers part of subject-matter of a suit, the appellant can have refund in respect of only a proportionate part of the court-fee. *AIR 1943 Nag 349=ILR 1940 Nag 538 (DB)*.

Section 13—Return of plaint for presentation to proper Court—Where a plaint is returned under Order 7, Rule 10 of CPC for presentation to proper court the plaintiff is not bound to pay fresh court-fee in the latter Court if he has paid full court-fee on the plaint at the time of its original presentation. *AIR 1926 Cal 355 (DB)*. (Plaint returned for presentation to proper Court—After return but before representation amendment in Court-fees Act increasing Court-fee—Plaintiff will be credited with amount already paid as court-fee and will have to pay only deficit).

Section 13—Rejection of plaint or appeal for deficiency of Court-fee—A court cannot while dismissing a suit or appeal for insufficiency of court-fee or when rejecting a plaint or appeal for insufficiency of court-fee, order refund of court-fee already paid. *AIR 1937 All 505 (DB)+AIR 1928 Patna 29=6 Patna 602 (DB)* but the court may order refund where interest of justice so demands. *AIR 1951 Mad 801*.

Section 13—Use of Court-fee in subsequent proceedings—A Court-fee paid but not utilised in a proceeding may be used in a subsequent proceedings in the matter. *AIR 1961 Tripura 22*.

Section 13—Where excess court-fee is paid on a suit in lower court, credit for such excess may be allowed in appeal to plaintiff-appellant by the appellate Court. *1886 All WN 228*.

Section 13—Withdrawal of suit or appeal—The High Court in its inherent jurisdiction can order refund of court-fee on the withdrawal of the appeal, the proceedings in which had not gone beyond the stage of admission. *PLD 1976 Lahore 1268+AIR 1936 Lahore 301*.

Section 13—Refund of Court-fee in High Court—A court cannot direct refund of additional court-fee paid on demand by taxing officer of the Court. 1907 *Pun Re.* 39, p 168+*AIR 1926 Patna 147(DB)+AIR 1924 Patna 310 (DB)*.

Section 13—Court-fee on application for refund—An application for refund of court-fee under this section falls under section 19 and no court-fee is chargeable on it. *AIR 1932 All 590=54 All 790*.

Section 13—Use of wrong stamps—Where a plaint has been sufficiently but incorrectly stamped and a proper stamp has been affixed within the time allowed and an application is made to Court for return of stamps. The trial Court cannot return the stamps, but should give a certificate for presenting the application to the Collector. *AIR 1934 Nag 263=31 Nag LR 82*.

14. Refund of fee on application for review of judgment—Where an application for a review of judgment is presented on or after the ninetieth day from the date of the decree, the Court, unless the delay was caused by the applicant's laches, may, in its discretion, grant him a certificate authorising him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before such day.

15. Refund where Court reverses or modifies its former decision on ground of mistake—Where an application for a review of judgment is admitted, and where, on the rehearing, the court reverses or modifies its former decision on the ground of mistake in law or fact, the applicant shall be entitled to a certificate from the Court authorising him to receive back from the Collector so much of the fee paid on the ¹[application] as exceeds the fee payable on any other application to such Court under the second schedule to this Act, No. 1, clause (b) or clause (d).

1. This word was substituted for the words and comma "plaint or memorandum of appeal," by section 1 of the Court-fees (Amendment) Act, 1870 (XX of 1870).

But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly or in part, to fresh evidence which might have been produced at the original hearing.

Case-Law

Section 15—Grant of refund of court-fees under this section is obligatory on the Court. *AIR 1916 Lahore 350 (DB)+AIR 1958 Punj 38 (FB)*.

Section 15—The mere fact that an application for review is treated as one falling under section 151, Civil PC instead of under Order 47, Rule I of that Code will not make this section inapplicable. *AIR 1924 Cal 1054*. (The powers exercisable under the provisions are not mutually exclusive).

Section 15—Delay in filing application—A delay of six months in making an application for refund of court-fees does not bar grant of such refund. *AIR 1932 Patna 86=10 Patna 649 (DB)*.

16. [Additional fee where respondent takes objection to unappealed part of decree.] Rep by Act V of 1908.

17. Multifarious suits—(1) In any suit in which two or more separate and distinct causes of action are joined and separate and distinct reliefs are sought in respect of each, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees with which the plaints or memoranda of appeal would be chargeable under this Act in separate suits instituted in respect of each such cause of action:

Provided that nothing in this sub-section shall be deemed to affect any power conferred by or under the Code of Civil Procedure, 1908 to order separate trials.

1. Section 17 was substituted for the original section by section 12 of the Court-fees (Bengal Amendment) Act, 1935 (Bengal Act VII of 1935).

(2) 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.

Case-Law

Section 17—Valuation of a petition in revision must be according to the value of the original suit and is not to be valued only on the subject-matter of the petition—Where a suit for partition was valued at Rs 4,500.00 and Rs 10.00 for injunction and a revision petition relating to injunction was valued at below Rs 1,000.00 and was filed before a Single Bench of the High Court dealing with matter not exceeding Rs 2,000.00 in value which issued a Rule:

Held: The petition should have been valued at the original valuation of the suit and filed before a Division Bench and the Judge issuing the Rule had no jurisdiction to entertain the petition sitting singly. *Abdul Mannaf vs Sree Golap Pushpa Sen*, 11 DLR 163.

Section 17—Calculation of Court-fee—The object of the section is to prevent loss to revenue owing to separate causes of action being combined in one suit. 1910 Pun LR No. 56, P 142=1910 Pun Re. No. 41 (DB)+1895 Pun Re. No. 96, P 455 (DB). Therefore where distinct subjects are covered by one suit, it falls under this section for the purpose of calculation of Court-fee and each relief should be valued and Court-fee on each relief should be calculated separately as if the suit was a collection of so many different suits. AIR 1933 Mad 178 (DB) (*Test is what is amount that would be payable had separate complaints been filed.*)+12 Bom 98 (DB).

Section 17—Separate causes of action—Separate causes of action will not be a test for treating claims based on them as distinct subjects. 8 Cal 593 (FB). Therefore a suit including more than one cause of action does not necessarily embrace two or more distinct subjects. AIR 1930 Mad 833=54 Mad 1(FB).

Section 17—One cause of action, several reliefs—One cause of action may embrace two or more distinct subjects. AIR 1935 Cal 573 (DB). (27 All 186 and 16 All 401 dissented; AIR 1922 Patna 359 partly

dissented from)+AIR 1943 Patna 355+AIR 1953 Mad 888. ("Distinct subjects" means distinct subject-matters which are not only distinct but can be clubbed together in a single suit)+AIR 1949 Patna 425 (DB)+AIR 1946 Mad 162. Where distinct reliefs arise out of the same cause of action, Court-fee is payable on consolidated amount as section 17 does not provide for such a case. AIR 1949 All 170=ILR 1949 All 852.

Section 17—A suit by a creditor against principal debtor and several persons who guaranteed the amount, by separate pronotes or mortgages is a suit embracing distinct subjects. AIR 1915 Low Bur 97=8 Low Bur Rule 219 (FB).

Section 17—Alternative reliefs claimed—Where a suit includes two or more distinct causes of action the fact that reliefs in respect of different causes of action are sought not cumulatively but in alternative will not affect the applicability of the section. 1895 Pun Re. 96, p 455 (DB)+AIR 1924 Nag 169. But where there is only one cause of action, the fact that several reliefs are sought cumulatively or in alternative, will not attract application of this section. AIR 1938 Lahore 566+AIR 1924 Lahore 494=5 Lahore 114 (DB)+AIR 1942 Mad 744. In such cases if reliefs are claimed in the alternative, Court-fee payable in respect of the relief carrying the highest court-fee will be court-fee for the suit. AIR 1926 Lahore 467 (DB)+AIR 1939 Mad 585 (DB)+AIR 1955 Pun 22 (DB).

Section 17—Suit seeking more than one relief—Under this section and in other cases court-fee for a suit is to be calculated according to reliefs sought therein. AIR 1936 All 874 (SB)+AIR 1938 Bom 307. (Suit for dissolution of partnership and accounts, declaration that certain transactions were not binding on plaintiff's share and for partition and possession of his share—Suit falls under section 17 as it claims distinct reliefs)+AIR 1953 Cal 583 (DB). The word 'relief' in this section should not be construed to mean 'kind of relief' and therefore when the plaintiff claims the same kind of relief, e.g. money claim for breaches of different terms in the same contract they are separate reliefs founded on different causes of action and have to be valued separately for the purposes of court-fees. AIR 1950 Nag 189=ILR 151 Nag 463.

Section 17—Where out of two alternative reliefs one requires a higher court-fee, court-fee is payable on the relief requiring the higher court-fee. AIR 1965 Orissa 108.

Section 17—Substantive and ancillary relief—Where a substantive and an ancillary relief is claimed, Court-fee for substantive relief would cover the ancillary relief also and no separate court-fee need be paid for it. *AIR 1920 Lahore 72+35 Cal 202= 35 Ind App 21 (PC)+AIR 1936 All 874 (DB)*.

Section 17—Court-fees on appeals—Court-fee payable in an appeal embracing two or more distinct subjects would be the total fees calculated with respect to each of the 'subjects' separately. *AIR 1935 Lahore 605 (DB)+AIR 1918 All 232+AIR 1944 Patna 387 (DB)*.

Section 17—Separate appeals—Where separate appeals are filed by different parties against the same decree. Separate court-fees are payable on each appeal. *AIR 1919 Lahore 450=1918 Pun No. 91 (DB)*.

Section 17—Consolidation of appeals—The court has inherent power to consolidate appeals in proper cases. *AIR 1918 Mad 368+40 Cal 955 (DB)+33 Cal 927 (DB)*. In case of consolidation each appeal must be assessed with separate court-fee. *AIR 1930 Mad 376 (FB)*. (Overruling *AIR 1928 Mad 463+AIR 1929 Cal 135 (DB)+29 Cal 140 (DB)*).

Section 17—Suits for declaration—Where several declarations are sought in a suit, on the basis of distinct causes of action. Separate Court-fee must be paid in respect of each declaration sought. *AIR 1935 Sind 129+AIR 1916 Lahore 21=1916 Pun Re. No. 87 (DB)*.

Section 17—Declaration with consequential relief—Where a plaintiff files a suit for a declaration with consequential relief, the case is covered by section 7 and not by this section. *PLD 1967 Karachi 733*.

Section 17—Suit for possession and mesne profits—A suit for possession and mesne profits does not embrace distinct subjects within the meaning of this section. *AIR 1942 Oudh 412 (DB)+AIR 1951 Trav-Co. 142 (DB)*.

Section 17—Suit for specific performance and possession—A suit for specific performance of a contract of sale and possession does not embrace distinct subjects within the meaning of this section. *AIR 1924 Mad 360 (DB)+AIR 1950 Nag 226 (Court-fee is payable on consideration for contract)+AIR 1920 Oudh 167=23 Oudh Cas 388, Dissented (See also AIR 1928 Lahore, 635)*.

Section 17—Suit for joint possession and partition embraces two distinct subjects for the purpose of this section. *AIR 1924 Patna 558=3 Patna 618 (DB)*.

18. Written examinations of complainants—When the first or only examination of a person who complains of the offence of wrongful confinement, or of wrongful restraint, or of any offence other than an offence for which police-officers may arrest without a warrant, and who has not already presented a petition on which a fee has been levied under this Act, is reduced to writing under the provisions of ¹[the Code of Criminal Procedure, 1898], the complainant shall pay ²[a fee of one ³[Taka] unless the Court thinks fit to remit such payment.

19. Exemption of certain documents—Nothing contained in this Act shall render the following documents chargeable with any fee :

i Power-of-attorney ⁴[or other written authority] to institute or defend a suit when executed by an officer, warrant-officer, non-commissioned officer or private of ⁵[the ⁶[Bangladesh] Army] not in civil employment.

ii [Rep by the Amending Act, 1891 (XII of 1891)].

1. The words within square brackets were substituted for the words "the Code of Civil Criminal Procedure" by East Pakistan Ordinance XIII of 1962, 1st Schedule.

2. These words were substituted for the words "a fee of eight annas" by section 3 of the Bengal Court-fees (Amendment) Act, 1922 (Bengal Act IV of 1922).

3. This word was substituted for the word "rupee" by Act VIII of 1973 section 3 and 2nd Schedule (with effect from 26-3-71).

4. These words were inserted by section 13(a) of the Court-fees (Bengal Amendment) Act, 1935 (Bengal Act VII of 1935).

5. These words were substituted for the words "Her Majesty's Army" by PO I of 1961.

6. This word was substituted for the word "Pakistan" by Act VIII of 1973 section 3 and 2nd Schedule (with effect from 26-3-71).

~~iii~~ Written statements called for by the Court after the first hearing of a suit.

~~ii~~ [Rep by the Cantonments Act, 1889 (XIII of 1889)].

~~2~~ viii Probate of a will and letters of administration, where the amount or value of the property in respect of which the probate or letters shall be granted does not exceed two thousand ³[Taka].

~~ix~~ Application or petition to a Collector or other officer making a settlement of land-revenue, or to ⁴[the ⁵[National Board of Revenue] or the Commissioner], relating to matters connected with the assessment of land or the ascertainment of rights thereto or interest therein, if presented previous to the final confirmation of such settlement.

~~x~~ Application relating to a supply for irrigation of water belonging to Government.

~~xi~~ Application for leave to extend cultivation, or to relinquish land, when presented to an officer of land-revenue by a person holding, under direct engagement with Government, land of which the revenue is settled, but not permanently.

~~xii~~ Application for service of notice of relinquishment of land or of enhancement of rent.

~~xiii~~ Written authority to an agent to distrain.

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1. Paragraphs v to vii were omitted by GGO of 1949.
 2. This paragraph was substituted for original paragraph viii by the East Pakistan Repealing and Amending Ordinance, 1962 (East Pakistan Ordinance XIII of 1962), First Schedule.
 3. This word was substituted for the word 'rupee' by Act VIII of 1973 section 3 and 2nd Schedule (with effect from 26-3-71).
 4. These words were substituted for the words and comma "a Board of Revenue, or a Commissioner of Revenue" by East Pakistan Ordinance XIII of 1962.
 5. These words were substituted for the words "Board of Revenue" by Act VIII of 1973, section 3 and 2nd Schedule (with effect from 26-3-71).

- xiv. First application (other than a petition containing a criminal charge or information) for the summons of a witness or other person to attend either to give evidence or to produce a document, or in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court.
- xv. Bail bonds in criminal cases, recognizances to prosecute or give evidence and recognizances, for personal appearance or otherwise.

Case-Law

Section 19—No order for probate or letters of administration can be granted unless a valuation of the property is given as set forth in the 3rd Schedule of the Act. The application that is filed in a Probate proceeding is in the nature of a Miscellaneous judicial proceeding and Taka 10.00 is required as Court-fees in Memo of Appeal. *Golak Chandra Roy vs Niva Rani Guha Roy* 40 DLR 382.

Section 19(xv)—Bound for keeping the peace and being of good behaviour—No court-fee payable. *PLD 1960 (Azad J and K) 35*.

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- xvii. Petition by a prisoner, or other person in duress or under restraint of any Court or its officers.

Case-Law

Section 19(xvii)—Petition against acquittal—Court-fee stamp on petition necessary. *PLD 1957 (Azad and Kashmir) 54*.

- xviii. Complaint of a public servant (as defined in the ²Penal Code), a municipal officer ^{3*} * *

1. Paragraph xvi was omitted by GGO 4 of 1949.

2. The word "Pakistan" was omitted by Act VIII of 1973, section 3 and 2nd Schedule (with effect from 26-3-71).

3. The words "or an officer or servant of Railway Company" were omitted, *Ibid*.

- xix. Application for permission to cut timber in Government forests, or otherwise relating to such forests.
- xx. Application for the payment of money due by Government to the applicant.
- xxi. Petition of appeal against the chowkidari assessment under Act No. XX of 1856, or against any municipal tax.
- xxii. Applications for compensation under any law for the time being in force relating to the acquisition of property for public purposes.

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²xxiv. Petitions under the ³[Christian Marriage Act], 1872, sections 45 and 48.

⁴xxv. Petitions of appeal ⁵[by Government servants or servants of] a Court of Wards against orders of dismissal, reduction or suspension; copies of such orders filed with such appeals, and applications for obtaining such copies.

Case-Law

Section 19—No order for probate or letters of administration can be granted unless a valuation of the property is given as set forth in the 3rd Schedule of the Act. The application that is filed in a Probate proceeding is in the nature of a Miscellaneous judicial proceeding and Taka 10.00 is required as Court-fees in Memo of Appeal. *Golak Chandra Roy vs Niva Rani Guha Roy* 40 DLR 382.

1. Paragraph xxii was omitted by GGO 4 of 1949.

2. Paragraph xxiv was substituted for the original clause by section 2 of the Indian Christian Marriage Act, 1872 (XV of 1872).

3. These words were substituted for the words "Indian Christian Marriage Act" by the East Pakistan Repealing and Amending Ordinance, 1962 (East Ordinance XIII of 1962), First Schedule.

4. Paragraph xxv was added by section 13(b) of the Court-fees (Bengal Amendment) Act, 1935 (Ben Act VII of 1935).

5. These words substituted for the words "by servants of the Crown or" by East Pakistan Ordinance XIII of 1962, First Schedule.

Section 19—Vakalatnam or ‘mukhtarnama’—Clause (I)—A vakalatnama or mukhtarnama is a kind of power-of-attorney and hence the exemption under this clause will apply to a vakalatnama or mukhtarnama executed by any person mentioned in the clause for the purpose of instituting or defending a suit. *AIR 1937 Nag 65+ILR 1937 Nag 494.*

Section 19—Written statement—clause(iii)—The clause applies to written statements filed in miscellaneous cases. *AIR 1934 All 332=56 All 747.* (Written statements filed in answer to an application by Official Liquidator of a company to set aside transfers as fraudulent.)

Section 19—Bail bond for keeping the peace—Clause (xv)—A bond given by a person under the Criminal Procedure Code, 1898, for his keeping the peace or to be on good behaviour is exempt from payment of Court-fees under section 19, clause (xv) of the Court-fees Act, 1870. *PLD 1960 Azad J & K 35.*

Section 19—Petition by prisoner—Clause (xvii)—An application by a prisoner for setting aside the order of acquittal of the opposite parties and for their being convicted and sentenced according to law does not fall within the clause as it does not ask for any relief affecting him in his capacity as a prisoner. *PLD 1957 AJK 54 (DB)+AIR 1936 All 318.*

Section 19—Civil cases—Where a judgment-debtor, while in custody, applied, under Chapter XX, Civil PC to be declared insolvent and on the application being refused by lower Court appealed against the order, it was held that the case was governed by this clause and the memorandum of appeal was exempt from court-fee. *(84) 10 Cal 161.*

Section 19—Complaints by public servant, etc—Clause (xvii)—A complaint by an official in an official capacity does not require a court-fee stamp. *AIR 1930 All 820=53 All 208=32 Cri L Jour 306.*

Section 19—Application for money due from Government—Clause (xx)—An application for refund of court-fees under section 13 of the Act is covered by this clause and no court-fee is chargeable on such application. *AIR 1932 All 590=54 All 790.*

¹Chapter IIIA

Probates, Letters of Administration and Certificates of Administration

19A. Relief where too high a court-fee has been paid—
Where any person on applying for the probate of a will or letters of administration has estimated the property of the deceased to be of greater value than the same has afterwards proved to be, and has consequently paid too high a court-fee thereon, if, within six months after the true value of the property has been ascertained, such person produces the probate or letters to the ²[Chief Revenue-authority] ³[for the local area] in which the probate or letters has or have been granted,

and delivers to such Authority a particular inventory and valuation of the property of the deceased, verified by affidavit or affirmation,

and if such authority is satisfied that a greater fee was paid on the probate or letters than the law required, the said authority may—

- (a) cancel the stamp on the probate or letters if such stamp has not been already cancelled;
- (b) substitute another stamp for denoting the court-fee which should have been paid thereon; and
- (c) make an allowance for the difference between them as in the case of spoiled stamps, or repay the same in money, at his discretion.

1. Chapter IIIA was inserted by section 6 of the Probate and Administration Act, 1875 (XIII of 1875).

2. The words within square brackets were substituted for the words "Chief Controlling Revenue-Authority" by East Pakistan XIII of 1962.

3. These words were substituted for the words "of the Province" by section 3(1) of the Court-fees (Amendment) Act, 1901 (X of 1901).

Case-Law

Section 19A—Calculation of Court-fee—The court-fee is chargeable on the value of the estate as at the date of application. Subsequent changes in value do not alter the amount of fee payable. (12) *14 Ind Cas 804 (Burma)*.

19B. Relief where—debts due from a deceased person have been paid out of his estate—Whenever it is proved to the satisfaction of such authority that an executor or administrator has paid debts due from the deceased to such an amount as, being deducted out of the amount or value of the estate, reduces the same to a sum which, if it had been the whole gross amount or value of the estate, would have occasioned a less court-fee to be paid on the probate or letters of administration granted in respect of such estate than has been actually paid thereon under this Act,

such authority may return the difference, provided the same be claimed within three years after the date of such probate or letters.

But when, by reason of any legal proceeding, the debts due from the deceased have not been ascertained and paid, or his effects have not been recovered and made available, and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said term of three years, the said authority may allow such further time for making the claims as may appear to be reasonable under the circumstances.

19C. Relief in case of several grants—Whenever ¹ * * a grant of probate or letters of administration has been or is made in respect of the whole of the property belonging to an

1. The word "such" which was repealed by the Amending Act, 1891 (XII of 1891).

estate, and the full fee chargeable under this Act has been or is paid thereon, no fee shall be chargeable under the same Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate.

Whenever such a grant has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under this Act shall be deducted when a like grant is made in respect of property belonging to the same estate, identical with or including the property to which the former grant relates.

Case-Law

Section 19-C—Fresh grant : The principle on which the relief is granted under the section is that at the time of the fresh grant there is no new succession or devolution of the estate. *AIR 1916 Cal 290=43 Cal 625 (DB)*. Thus when there are several executors and probate is granted first to one on payment of full fee and then to another, no fresh court-fee is payable at the time of second grant. (71) 15 *Suth WR* 496.

19D. Probates declared valid as to trust-property though not covered by court-fee : The probate of the will or the letters of administration of the effects of any person deceased heretofore or hereafter granted shall be deemed valid and available by his executors or administrators for recovering, transferring or assigning any movable or immovable property whereof or whereto the deceased was possessed or entitled, either wholly or partially as a trustee, notwithstanding the amount or value of such property is not included in the amount or value of the estate in respect of which a court-fee was paid on such probate or letters of administration.

Case-Law

Section 19D—Property held by deceased as trustee—No stamp duty is payable on probates or letters of administration in respect of property to which the deceased was entitled as a trustee. (75) 14 Beng LR 184 (Hindu lady succeeding to her father's property for the estate of a Hindu daughter—On the application by her sons for letters of administration, held on her death the grant, father's estate became in the hands of her representatives trust property in respect of which no duty was payable.

19E. Provision for case where too low a court-fee has been paid on probates, etc—Where any person on applying for probate or letters of administration has estimated the estate of the deceased to be of less value than the same has afterwards proved to be, and has in consequence paid too low a court-fee thereon, the ¹[Chief Revenue-authority] ²[for the local area] in which the probate or letters has or have been granted may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate or letters of administration to be duly stamped on payment of the full court-fee which ought to have been originally paid thereon in respect of such value and of the further penalty, if the probate or letters is or are produced within one year from the date of the grant, of five-times, or, if it or they, is or are produced after one year from such date, of twenty times, such proper court-fee, without any deduction of the court-fee originally paid on such probate or letters;

Provided that, if the application be made within six months after the ascertainment of the true value of the estate and the discovery that too low a court-fee was at first paid on the probate or letters, and if the said Authority is satisfied

1. The words within square brackets were substituted for the words "Chief Controlling Revenue-Authority" by East Pakistan XIII of 1962.

2. These words were substituted for the words "of the Province" by section 3(1) of the Court-fees (Amendment) Act, 1901 (X of 1901).

that such fee was paid in consequence of a mistake or of its not being known at the time that some particular part of the estate belonged to the deceased, and without any intention of fraud or to delay the payment of the proper court-fee, the said Authority may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been at first paid thereon.

19F. Administrator to give proper security before letters stamped under section 19E—In case of letters of administration on which too low a court-fee has been paid at first, the said Authority shall not cause the same to be duly stamped in manner aforesaid until the administrator has given such security to the Court by which the letters of administration have been granted as ought by law to have been given on the granting thereof in case the full value of the estate of the deceased had been then ascertained.

19G. Executors, etc not paying full court-fee on probates, etc, within six months after discovery of under payment—Where too low a court-fee has been paid on any probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under such probate or letters does not, within six months ^{1*} * * after the discovery of the mistake or of any effects not known at the time to have belonged to the deceased, apply to the said Authority and pay what is wanting to make up the court-fee which ought to have been paid at first on such probate or

1. The words, comma and figures "after the first day of April 1875 or" were repealed by the Amending Act, 1891 (XII of 1891).

letters, he shall forfeit the sum of one thousand ¹[Taka] and also a further sum at the rate of ten ¹[Taka] percent on the amount of the sum wanting to make up the proper court-fee.

²19H—(1) Notice of applications for probate or letters of administration to be given to Revenue-authorities, and procedure thereon—Where an application for probate or letters of administration is made to any Court other than ³[the High Court Division], the Court shall cause notice of the application to be given to the Collector.

Case-Law

Section 19H—Object of section—The object of this section, is to safeguard revenue and not to delay grant of probate or letters, (28) 32 Cal WN 799+AIR 1925 Cal 1201=52 Cal 87 (DB).

Section 19H—Certificate of Taxing Officer—Where a claim is made that part of the property in regard to which probate or letters of administration are applied for, is trust property, the Taxing Officer should refer the matter to the Chief Justice under section 5. AIR 1935 Cal 509=62 Cal 114.

Section 19H—Letters of administration—Suit for—Reference to Collector not answered within reasonable time—Letters of administration should not be delayed. PLD 1955 Sind 54.

(2) Where such an application as aforesaid is made to ³[the High Court Division], the ³[the High Court Division] shall cause notice of the application to be given to the ⁴[Chief

1. This word was substituted for the word "rupees" by Act VIII of 1973 Section 3 and 2nd Schedule (with effect from 26-3-71).

2. Sections 19H, 19-I, 19J and 19K were inserted by section 2 of the Court-fees Amendment Act, 1898 (XI of 1899).

3. These words were substituted for the words "a High Court" or "High Court" by Act VIII of 1973, section 3 and 2nd Schedule (with effect from 26-3-71).

4. The words within square brackets were substituted for the words "Chief Controlling Revenue Authority" by East Pakistan Ordinance XIII of 1962 First Schedule.

Revenue Authority] ¹[for the local area in which ²[the High Court Division] is situated.

(3) The Collector within the local limits of whose revenue-jurisdiction the property of the deceased or any part thereof, is, may at any time inspect or cause to be inspected, and take or cause to be taken copies of, the record of any case in which application for probate or letters of administration has been made; and if, on such inspection or otherwise, he is of opinion that the petitioner has under-estimated the value of the property of the deceased, the Collector may, if he thinks fit, require the attendance of the petitioner (either in person or by agent) and take evidence and inquire into the matter in such manner as he may think fit, and, if he is still of opinion that the value of the property has been under-estimated, may require the petitioner to amend the valuation.

(4) If the petitioner does not amend the valuation to the satisfaction of the Collector, the Collector may move the Court before which the application for probate or letters of administration was made, to hold an inquiry into the true value of the property:

Provided that no such motion shall be made after the expiration of six months from the date of exhibition of the inventory required by ³[section 317 of the Succession Act, 1925].

(5) The Court, when so moved as aforesaid, shall hold or cause to be held, an inquiry accordingly, and shall record a

1. These words were substituted for the words "of the Province" by section 3(2) of the Court-fees (Amendment) Act, 1901 (X of 1901).

2. These words were substituted for the words "a High Court" or "High Court" by Act VIII of 1973, section 3 and 2nd Schedule (with effect from 26-3-71).

3. The words, comma and figures within square brackets were substituted for the words, commas and figures "section 277 of the Indian Succession Act, 1865, or, as the case may be, by section 98 of the Probate and Administration Act, 1881" by the East Pakistan Repealing and Amending Ordinance, 1962 (East Pakistan Ordinance, XIII of 1962) First Schedule.

finding as to the true value, as near as may be, at which the property of the deceased should have been estimated. The Collector shall be deemed to be a party to the inquiry.

(6) For the purposes of any such inquiry, the Court or person authorised by the Court to hold the inquiry may examine the petitioner for probate or letters of administration on oath (whether in person or by commissions), and may take such further evidence as may be produced to prove the true value of the property. The person authorised as aforesaid to hold the inquiry shall return to the Court the evidence taken by him and report the result of the inquiry, and such report and the evidence so taken shall be evidence in the proceeding, and the Court may record a finding in accordance with the report, unless it is satisfied that it is erroneous.

(7) The finding of the court recorded under sub-section (5) shall be final, but shall not bar the entertainment and disposal by the ¹[Chief Revenue-authority] of any application under section 19E.

(8) The ²[Government] may make rules for the guidance of Collectors in the exercise of the powers conferred by sub-section (3).

³**19-I. Payment of court-fee in respect of probates and letters of administration—(1)** No order entitling the petitioner to the grant of probate or letters of administration shall be made upon an application for such grant until the petitioner has filed in the Court a valuation of the property

1. The words within square brackets were substituted for the words "Chief Controlling Revenue Authority" by East Pakistan Ordinance XIII of 1962 First Schedule.

2. The word within square brackets was substituted for the words "Province Government" by Act VIII of 1973, section 3 and 2nd Schedule (with effect from 26-3-71).

3. Sections 19H, 19-I, 19J and 19K were inserted by section 2 of the Court-fees Amendment Act, 1898 (XI of 1899).

in the form set forth in the third schedule, and the Court is satisfied that the fee mentioned in No. 11 of the first schedule has been paid on such valuation.

(2) The grant of probate or letters of administration shall not be delayed by reason of any motion made by the Collector under section 19H, sub-section (4).

Case-Law

Section 19I-I—Liability to pay Court-fee—Court-fee on probates or letters of administration is payable under this section and not under section 6. *17 Cal WN 21 (DB)*.

Section 19-I—Grant of letters to administer ‘pendente lite’—Where during the pendency of proceedings for grant of letters of administration an application is made for appointment of an administrator *pendente lite*, Court-fee must be paid on the application for such appointment. *AIR 1926 Rang 89 (DB)*.

Section 19-I—Judgment debts, valuation of—A judgment-debt need not be valued at its face value but value may be put on it according to chances of recovering it. *AIR 1931 Bom 419=55 Bom 844*.

Section 19-I—Property subject to litigation—The mere fact that property is subject of litigation will not in itself make it impossible for value of the property being assessed for the purpose of duty on probate or letters of administration. *24 Mad 241 (DB)+AIR 1956 Bom 404 (DB)*.

Section 19-I—Government Provident Fund—Government and Railway Provident Fund money is not liable to duty, when application for letters of administration is made in respect of estate of the deceased. *AIR 1928 Rang 312=6 Rang 558*.

Section 19-I—Where the person contributing to the Provident Fund has nominated some one the money vests in the nominee on the death of the contributor and it is not liable to duty. *AIR 1930 Cal 252 (DB)*. (Nominee cannot be compelled to take out letters of administration—Railway Company+Employer can only insist on proof of identity)+*AIR 1926 Nag 306+AIR 1925 Nag 108*.

Section 19-I—Provident Fund of Companies—The private company creating the fund does not hold it as trustee for the dependant or nominee of the deceased. Therefore Court-fee is payable on probate or letters of administration for the money. *AIR 1928 Rang 312=6 Rang 558.*

Section 19-I—Insurance money—A nominee in respect of a policy of insurance does not become the owner of the money payable under the policy merely by reason of the nomination. The policy-holder continues to be the owner up to the end of his life and has full power of disposal over it. Hence, the money payable under the policy is to be treated as a part of the testator's assets and court-fee is to be paid on it under this section. *AIR 1953 All 721.*

Section 19-I—Court-fee is payable out of estate of deceased—A petitioner for the probate of a will is not liable under any provision of law to pay the amount of court-fee out of his own property. These sums are to be paid out of the deceased's estate. *AIR 1956 All 152.*

Section 19-I—Date of valuation of property and Court-fee—Value of property of the deceased for purposes of calculation of court-fees under Schedule I, Article 11 is its value on the date of application for probate or letters of administration and not its value at the time of death of the deceased. *AIR 1933 Lahore 936=14 Lahore 526+AIR 1921 Patna 206 (DB).*

Section 19-I—Probate or letters in respect of portion of estate—Where a petitioner seeks probate or letters relating to portion of an estate, valuation of the estate and court-fee need not be in respect of the whole estate. *AIR 1925 Lahore 493.*

Section 19-I—Property situate in different provinces or partly situate abroad—Where property is situate in different provinces of Pakistan, court-fee is to be calculated according to rates prevailing in the Province in which probate or letters is or are granted. *AIR 1924 Cal 115=50 Cal 597.*

¹19-J—**Recovery of penalties, etc—(I)** Any excess fee found to be payable on an inquiry held under section 19H, sub-section (6), and any penalty of forfeiture under section 19G, may, on the certificate of the ²[Chief Revenue authority], be recovered from the executor or administrator as if it were an arrear of land revenue by any Collector ^{3*}

* * * *

(2) The ²[Chief Revenue-authority] may remit the whole or any part of any such penalty or forfeiture as aforesaid or any part of any penalty under section 19E or of any court-fee under section 19E in excess of the full court-fee which ought to have been paid.

⁴19-K **Sections 6 and 28 not to apply to probates or letters of administration**—Nothing in section 6 or section 28 shall apply to probates or letters of administration.

1. Sections 19H, 19-I, 19J and 19K were inserted by section 2 of the Court-fees Amendment Act, 1899 (XI of 1899).

2. The words within square brackets were substituted for the words "Chief Controlling Revenue Authority" by East Pakistan Ordinance XIII of 1962 First Schedule.

3. The words "in any part of British India" were omitted by GGO 4 of 1949.

4. Sections 19H, 19-I, 19J and 19K were inserted by section 2 of the Court-fees Amendment Act, 1899 (XI of 1899).

Chapter IV

Process-fees

20. Rules as to costs of Processes—The ¹[Supreme Court] shall, as soon as may be, make rules as to the following matters—

- i. the fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction, and by the other Civil and Revenue Courts established within the local limits of such jurisdiction;
- ii. the fees chargeable for serving and executing processes issued by the Criminal Courts established within such limits in the case of offences other than offences for which police-officers may arrest without a warrant;
- iii. the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes.

The ¹[Supreme Court] may from time to time alter and add to the rules so made.

Confirmation and publication of rules—All such rules, alterations and additions shall, after being confirmed by the ²[Government] ³* * * be published in the ⁴[Official Gazette], and shall thereupon have the force of law.

1. These words were substituted for the words "High Court" by Act VII of 1973, section 3 and 2nd Schedule (with effect from 26-3-71).

2. This word was substituted for the words "Provincial Government", Ibid.

3. The words "and sanctioned by the Governor-General of India in Council" were omitted by section 2 and the First Schedule of the Devolution Act, 1920 (XXXVIII of 1920).

4. These words were substituted for the words "Local Official Gazette" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

Until such rules shall be so made and published, the fees now leviable for serving and executing processes shall continue to be levied, and shall be deemed to be fees leviable under this Act.

Case-Law

Section 20—The HC has no power to relax the process fee under the rules framed by it. *3 CWN 82*.

Section 20—A commission issued to make local investigation is not a process within the section. *17 C 81*.

Section 20—Custody fees—Custody fees in respect of movables attached in execution proceedings are covered by the section. *AIR 1937 Cal 86=ILR (1937) 1 Cal 624 (DB)*.

Section 20—Fees for local inspection—A commission to make a local investigation is not a process within the meaning of the section. *17 Cal 281 (DB)*.

Section 20—Powers of High Court—The High Court has no power to relax or remit the process-fees prescribed under the Rules made under this section. Order 48, Rule 1 of the Civil Procedure Code gives no such power. *AIR 1930 Mad 381=53 Mad 262 (FB)+AIR 1927 Patna 318+26 Cal 126 (DB)*.

21 Tables of process-fees—A table in the English and Vernacular languages, showing the fees chargeable for such service and execution, shall be exposed to view in a conspicuous part of each Court.

22. Number of peons in District and subordinate Court—Subject to rules to be made by the [Supreme Court] and approved by the ¹[President] ^{2*} * * * every District Judge and every Magistrate of a District shall

1. This word was substituted for the words "Provincial Government" by Act VIII of 1973, section 3 and 2nd Schedule (with effect from 26-3-71).

2. The words "and the Governor,—General of India in Council" were omitted by section 2 and the 1st Schedule of the Devolution Act, 1920 (XXXVIII of 1920).

fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court and each of the Court subordinate thereto.

Number of peons in Mofussil Small Cause Courts—and for the purpose of this section, every Court of Small Causes established ¹[under the Provincial Small Cause Courts Act, 1887] ^{2*} * * * * * shall be deemed to be subordinate to the Court of the District Judge.

23. Number of Peons in Revenue Courts—Subject to rules to be framed by the ³[Chief Revenue-authority] and approved by the ⁴[Government] ^{5*} * * * every officer performing the functions of a Collector of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court or the Court subordinate to him.

24. *[Process served under this chapter to be held to be process within meaning of the Code of Civil Procedure.] Rep by the Amendment Act, 1891 (XII of 1891).*

1. The words, comma and figures within square brackets were substituted for the words and figures "under the Act XI of 1865" by East Pakistan Ordinance XIII of 1962.

2. The words "to consolidate and amend the Law relating Courts of Small Causes beyond the local limits of the ordinary civil jurisdiction of the High Courts of Judicature" were omitted by Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973), section 3 and 2nd Schedule (with effect from 26-3-71).

3. The words within square brackets were substituted for the words "Chief Controlling Revenue Authority" by East Pakistan Ordinance XIII of 1962 First Schedule.

4. This word was substituted for the words "Provincial Government" by Act VIII of 1973, section 3 and 2nd Schedule (with effect from 26-3-71).

5. The words "and the Governor-General of India in Council" were omitted by the Devolution Act, 1920 (XXXVIII of 1920).