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DOES THE WORD "SUIT" IN S. 7 OF THE COURT FEES ACT INCLUDE "APPEAL."

I. Although the point involved in the above question is such as may be expected to arise daily in all Appellate Courts, it does not seem to have attracted its merited attention and as yet none of the High Courts has referred it to a Full Bench for decision. The question is one of general importance and its solution one way or the other would make a very large difference in the amounts to be realised as Court Fees. Suppose A sues for possession of land the market value of which is Rs. 2,000 but which pays Rs. 10 as Land Revenue. Now when the case goes in appeal either by plaintiff or defendant, the value of the appeal or its subject-matter and consequently the amount of fees payable on it would depend on the answer to the question on hand. If it be held that the word "suit" in S. 7 includes "appeal," then the value of the appeal would be 5 times the revenue *i. e*, 50, Court-fee on the same being Rs. 3-12-0. Whereas if the contrary is held, then the value of the appeal would be Rs. 2,000 under Article I of Schedule I and the Court-fee would be Rs. 125. Fortunately in such simple cases of the above type which form the majority of appeals, none has as yet pleaded that way and so in such cases the question in its direct form has not been considered by the High Courts. All the same that does not prevent parties raising their defence on the point and it is highly important that the question should be decided once for all for the benefit of the public.

II. So far as the Calcutta High Court is concerned, there is no reported decision pertinent to the point in question. In Bombay there is only one reported decision *viz.*, *Umarkhan* v. *Mahommadkhan* [1] which holds that in appeals in redemption suits under Cl. IX, S. 7 of the Court Fees Act,

1. (1885) I. L. R. 10 Bom. 41.

court-fee should be on the principal amount secured by the mortgage. This is not followed by the Madras High Court in "*Reference under the Court Fees Act* [1]." and by the Judicial Commissioner's Court at Nagpur in *Onkar* v *Lakmichand* [2] which latter remarks that in *Umarkhan* v. *Mahommadkhan* [3], there is no examination of the provisions of the Act and the conclusion does not seem to be the outcome of a critical examination of its various sections and articles.

III. In Allahabad, Edge, C. J, in *Pirbhu Narain* v. *Sita-Ram* [4], held that in an appeal for redemption on payment of amount which may be found due on taking accounts, court-fee should be paid on the principal amount of the mortgage as required by cl. IX of S 7. He impliedly assumes that cl. 9 applies to appeal and decides that court-fee does not depend on the amount alleged to be due by the mortgagor in his appeal. In this particular case the amount due for redemption not being ascertained, valuation was not possible. In an earlier case of pre-emption, *Hafiz Ahmad* v. *Sobha Ram* [5], it was held that "where an appeal is preferred in a suit for pre-emption on the ground that the right to pre-empt has or has not been established as the case may be, no matter what other pleas may be taken, the value of the subject-matter in dispute for the purposes of the Court Fees Act must be determined, as in terms provided in cl. VI of S. 7 of the Act." This case was referred to in the Taxing Officer's report in *Pirbhu Narain* v. *Sita Ram* [4], but from another standpoint. The officer expressly stated that S. 7 relates to suits and not to appeals. Inspite of this, Edge, C. J., held that court-fee should be on the principal. The Judgment of Edge, C. J., no doubt is not very lengthy and does not contain an exhaustive examination of the provisions of the Act but both 6 All. 488 and 10 Bom. 41 were mentioned in the Taxing officer's report. The inference is that the learned Chief Justice must have considered these decisions. Thus his view, although the point *viz.*, whether S. 7 applies to appeals was not specifically discussed in the judgment must be taken to be that the word "Suit" in S. 7 includes "appeal." Later on, this view of Edge, C. J., was expressly dis-

1. (1905) I. L. R. 29 M. 367.
2. (1909) 5 N. L. R. 130.
3. (1885) I. L. R. 10 B. 41
4. (1890) I. L. R. 13 All. 94.
5. (1884) I. L. R 6 All. 488.

sented from, by Stanley, C. J., in *Nepal Rai* v. *Debi Prasad* [1], and from this time more attention is being paid to the wording of S. 7 and Art. 1 Sch. I. In this case plaintiff sued for redemption and a decree was passed for the same on payment of a definite sum by plaintiff to defendant. Plaintiff being dissatisfied, appealed for reduction of this amount by Rs. 288-11-0. The principal amount secured by the mortgage was more than this sum. It is not clear from the report whether the mortgage was simple or usufructuary. Stanley, C. J., observes that cl. 9 provides for suits for recovery of mortgaged property and the section does not apply to appeals and that consequently Article 1, Sch. I, which specifically provides for memorandum of appeal unless otherwise provided for in the Act, alone applies. Thus on consideration of S. 7 and Article 1, Sch. I the High Court changed its former view cf.—(13 All. 94) and definitely held that S. 7 does not provide for appeals, so that there being no provision in the Act, Article I of Sch. I alone applies. That appeal was for reduction by an ascertained amount and although the case of an appeal whose subject-matter is not definite and ascertained was not considered, it may be inferred that the court would decide in such a case that the market value would be the value of the subject-matter in appeal. The principle quoted above from *Hafiz Ahmad* v. *Sobha Ram* [2], was not noticed by the Court.

The question which is the subject of this article, again arose in *Mahadeo* v. *Gorakh* [3]. Here the suit was for foreclosure. Defendant-mortgagor pleaded that the mortgage claim had been satisfied from out of the usufruct enjoyed by the plaintiff-mortgagee. The Court held, that the whole claim was not satisfied and passed a decree for foreclosure in default of payment of a certain sum. Defendant appealed for total reduction of this amount. Aikman, J., in a judgment of 3 lines merely followed *Nepal Rai* v. *Debi Prasad* [1]. The same Judge again in *Bajilal* v. *Gobardhan* [4] does the same without discussing the point but merely remarks that all the decisions cannot be reconciled. Since then the High Court seems to assume as settled that S. 7 does not provide for appeals: *vide*

1. (1905) I. L. R 27 All. 447.
2. (1884) I. L. R. 6 A. 488.
3. (1908) I L R 30 All 547.
4. (1909) I. L R. 31 All. 265.

Baldeo Sing v. *Kalka* [1], and *Raghubir* v. *Shankar* [2]. It may be noted here that the same High Court held in the case of an appeal against an unconditional decree for possession, by defendant, a Mahomadan lady, on the ground that the decree should be conditional on payment of her debt of Rs. 8,000, that she should pay court-fee under cl. 5 S. 7. *Haidari* v. *Gulzar* [3]. This is interpreted by the Punjab Chief Court as supporting the principle that when the subject-matter in suit is the same as the subject-matter in appeal, court-fee should be the same. *Sohan* v. *Sardar* [4]. The Allahabad High Court thus follows the principle of *Hafiz Ahmad* v. *Sobha Ram* in *Hydari* v. *Gulzar* [2].

The Allahabad view in short, appears to be that where the subject-matter in appeal and suit is identical, court-fee is also the same, implying, that in such cases S. 7 applies ; but on the specific question of applying S. 7 to appeals it says that S. 7 does not apply. Thus there is a conflict of views.

IV. In Madras the same conflict between earlier and later decisions appears. *Reference under the Court Fees Act* [5], follows *Pirbhu* v. *Sitaram* [6] : see also *Vasudeva* v. *Madhava* [7] but later on White, C. J., with Subramaina Aiyar, J., in *Reference under Court Fees Act* [8], distinguished *Reference under Court Fees Act* [5], dissented from *Pirbhu* v. *Sitaram* [6] and held following *Nepal Rai* v *Debi Prasad* [9] that the word 'suit' in S. 7 does not include "appeal" and so Article 1 alone applies to appeals, there being no provision in the Act. But in the latest case of *Sekharan* v. *Eacharan* [10], the facts were as follows :— The suit was to redeem a Kanom mortgage ; the first court dismissed the suit, but the first Appellate Court gave the plaintiff a decree for redemption on payment of the kanom amount and a certain sum for value of improvements. Against this decree, certain of the defendants appealed and questioned plaintiff's right to redeem and also in the alternative contended that if it was held that plaintiff was entitled to redeem, he should be allowed to do so on payment of a larger sum than that fixed in the Lower Court. The extra amount claimed was not given in the memorandum of

1. (1912) I L. R. 35 All. 94.
2. (1913) I L. R. 36 All. 40 (F. B)
3. (1914) I. L. R. 36 All. 322
4. (1915) 32 I. C. 121.
5. (1891) I L. R. 14 M. 480
6. (1890) I. L. R. 13 All. 94.
7. (1892) I. L. R. 16 M 3[illegible]6.
8. (1905) I L. R. 29 M. 367.
9. (1905) I. L. R. 27 All. 447.
10. (1909) 20 M. L. J. 120.

appeal and court-fee was paid on the Kanom amount, *i.e.*, the principal only. Respondent objected that the extra amount should be mentioned and court-fee thereon should be paid in addition. The court consisting of Abdur Rahim and Munro, JJ., observed that the question before applying article 1 Sch. I was what is the value of the subject-matter in dispute. At first the learned Judges give the scope of a redemption suit as including claim for improvements and find that in the first court the suit would be under Cl. 9 of S 7 and its value would be the principal amount secured. The Judges then consider whether there is any change in the subject-matter in appeal and find that there is none. Then the question is "How then are we to value that subject-matter in the case of the appeal memorandum ?" The learned Judges answer, "we can only value it as in the case of the plaint as otherwise there is no provision in the Court Fees Act for valuing it. Suppose again the plaintiff gets a decree for redemption and the defendant as in the present case appeals contending that the plaintiff has no right to redeem, and in the alternative that if the plaintiff has the right to redeem, the amount payable by him is greater than that found by the Lower Court. Here again the nature of the suit is in no way changed in appeal. The same questions arise as arose originally and as arise in the appeal by the plaintiff just dealt with above *viz*, the existence of the right to redeem and the amount payable if that right is found to exist. There is no good reason why a defendant appealing on such grounds should be in a worse position than a plaintiff appealing on similar grounds." In support of the above view the learned Judges rely on the principle already quoted in para 3 of this article, from *Hafiz Ahmed* v. *Sobha Ram* [1]. They further observe perhaps with reference to the cases in *Nepal Rai* v. *Debi Prasad* [2] and *Reference under the Court Fees Act*, [3] "We are not concerned here with the case where in an appeal by plaintiff or defendant against a decree in a redemption suit the only question is as to the amount payable. In such a case the existence of the right to redeem cannot be said to be the subject-matter in dispute in the appeal memorandum for the existence of that right is not disputed. The subject-matter in dispute is a definite amount."

1. (1884) I. L. R. 6 A. 488. 2. (1905) I. L. R. 27 All. 447.
3. (1905) I. L. R. 29 M 467.

I have largely drawn from the reasoning of this case and given extensive extracts from the report, as there is a full exposition of the law on the matter and it fully answers the reasoning of cases like *Reference under the Court Fees Act* [1], and *Nepal v. Debi* [2]. No doubt the question put by the learned Judges before themselves was whether the subject-matter in appeal changed from the one in suit and finding this in the negative, they hold that the value of the same relief is the same both for plaint and memo. of appeal. They do not specifically decide the question whether the word "suit" in S. 7 includes "appeal." But saying that value of a subject-matter in a plaint as laid down in S. 7 remains also the same in appeal for the same subject-matter mean that S. 7 governs appeals, for it is only in S. 7 that the values of different subject-matters after classification, are given. Thus without giving a reply to the direct question why the word " suit " should be made to include " appeal " when the Legislature has omitted to mention the word "appeal" in S 7, the learned Judges hold that to give a different value to the same subject-matter when it goes in appeal is unjust and opposed to the principles of jurisprudence. The decision in the earlier case of *Reference under Court Fees Act* [3] implies a principle similar to the one enunciated in *Hafiz v. Sobharam* [4]. Plaintiff here sued for possession. Defendant claimed improvement expenses. The Court disallowed these. On appeal by defendant the Court held that the court-fee should be the same as on the plaint, the question of improvement being incidental. *Reference under Court Fees Act* [1] does not refer to this case.

Thus in Madras exactly the same result is arrived at as in Allahabad but here the latest view is in favour of the liberal interpretation on consideration of the provisions of the Act.

V. In Nagpur also the trend of opinion is in favour of the liberal view propounded in *Sekhran* v. *Eacharan* [5]. *Dhiraj* v. *Rajaram* [6] holds definitely that the value of a particular relief remains unchanged throughout all the stages of a litigation. This is followed in *Ghasidram* v. *Liladhar* [7]. On the other hand Bose, A.J C., in *Onkar* v. *Lacmichand* [8] states that from the

1. (1905) I. L. R 29 M. 367.
2. (1905) I. L. R 27 A 447.
3. (1889) I. L. R. 23 M. 84.
4. (1884) I L. R 6 All. 488.
5. (1909) 20 M L J. 120.
6. (1910) 6 N. L. R. 161.
7. (1913) 9 N. L R. 86.
8. (1909) 5 N L R. 131.

frame of Ss. 7, 8, 12, 17, and Sch. 1 article 1 and Sch. II articles 4, 5, 11, 15, 17 and 21, it seems that the Legislature intended to treat suits and appeals separately and so the omission of the word "appeal" in S. 7 is fatal to the application of that section to appeals This position may be answered thus. So far as the frame or structure of the Schedules and articles therein is concerned it is obvious from the very face of these that they are intended to enumerate the documents and not for valuing the subject-matter. So also Ss. 8, 12 and 17 are not inserted in the Act for that purpose. Mere mentioning suit and appeal, plaint or memo. of appeal, side by side does not prove that the Legislature meant to give them different values.

VI. The above conflict of views gives rise to two divergent opinions. One may be called liberal and the other literal. The latter may well be described in the words of White, C. J., in "*Reference under Court Fees Act* 1 . " Article 1 applies unless it can be said that *the matter* is otherwise provided for in the Act. Now turning to S. 7 I find that in cases falling under sub-section (VI) there is a special provision that the method of computation for the purpose of memorandum of appeal, shall be "otherwise " that is to say, it is according to the amount at which the relief sought is valued in the memorandum of appeal. There is no similar special provision with regard to cases falling within sub-section 9 (*c*). It seems to me that the word "suit " in this sub-section cannot be construed as including " appeal " and the appeals (unless otherwise provided for) are governed by Article 1." This leads us to the following four propositions including the premises and conclusion :—

(*a*) Article 1, applies unless the matter is otherwise provided for in the Act and if otherwise provided for, that provision applies.

(*b*) Sub-section 4 of S. 7 alone makes a special provision and so it comes under "otherwise " in Article 1 of Schedule I.

(*c*) Other clauses of S. 7 make no such provision.

(*d*) Word " suit " in these clauses cannot be construed to include " appeal."

VII. The first premise (*a*) is that "Article I applies when the matter is not otherwise provided for in the Act " That this is

1. (1905) I. L. R. 29 M. 367.

not accurate according to the actual wording of Article I, as it stands, may easily be seen. The article states that a plaint or memorandum of appeal not otherwise provided for in the Act requires court-fee at a certain rate on the amount or value of the subject-matter in dispute ; that is the article applies and provides for memorandum of appeal not otherwise provided for in the Act but the above premise holds that article 1 applies when its matter is not otherwise provided for in the Act. To what article I applies is not explained. It may mean that it applies to appeals or memo of appeal. With any meaning, the premise (*a*) as a whole assumes that Article I, provides both for memo. of appeals and its subject-matter. This is evidently not correct. Article I, in essence has nothing to do with the subject-matter or its value. These are left undealt with, to be governed by some other provision in the Act. All memos of appeal as documents come under Article I, but when the value of the subject-matter in dispute is to be considered Article I, or the whole Schedule I has nothing to say. It is only S. 7 that governs the subject-matter. In this way "the whole of S. 7 is a handle for the application of schedule I of the Act. It lays down the method of reaching the value as preliminary to finding the court-fees payable" *Dirajsing* v. *Rajaram* [1]. Words "not otherwise provided for in the Act" qualify the "memo. of appeal" and not the "subject-matter in dispute." Thus the assumption implied in this premise (*a*) is contrary to the real meaning of Article I, and consequently the whole reasoning based thereon must fail.

VIII. Premises (*b*) and (*c*). These assume that the word "Act" in the clause "not otherwise provided for in the Act" refers to the body of the Act and perhaps to the schedules also. It is doubtful that the word "Act" here refers to the body of the Act as such and not to schedules alone. At least two learned Judges of the Madras High Court observe in *Sekharan* v. *Eacharan* [2] that "the word "act" here refers to the schedules alone as it is those schedules alone which indicate the fee." Looking to the body of the Act it is in S. 7, cl. 4 and S. 8 only that the words "memo. of appeal" appear. No doubt "appeal" does not appear after the word "suit" in Sub-sec. 4. But appeal is different from memorandum of appeal. Turning to the structure

1. (1910) 6 N L. R. 164 at 166. 2. (1909) 20 M. L. J. 120.

and context of S 7 it can be easily seen that the mention of the memo. of appeal in Sub-sec. 4 is not for the purpose for which it finds place in Article 1. The object of Article 1 is to give the description of the document and that of S. 7 is to give the class and value of the subject-matter either in suit or appeal. The memo. of appeal is mentioned in Sub-sec. 4 in contra-distinction to plaint and the value being left to plaintiff or appellant there is a chance that plaintiff may no be appellant and the value may differ in appeal where the subject-matter is not co-extensive with that in the plaint Where it is co-extensive, there the value remains the same. *Samiya* v. *Minammal* [1], *Dhupati* v. *Perindevama* [2] and *Bunwari* v. *Daya Shanker* [3]. Besides had the Legislature meant to except memo, of appeal in suits under Sub-sec. 4 from the operation of Article I what just reason is there not to so deal with the plaint mentioned in sub-S. 4. The words "not otherwise provided for in the Act" qualify memorandum of appeal and not plaint in Art, 1. There is no just ground to make such distinction. Again with respect to S. 8 the same thing is to be said. There the word "memorandum of appeal" is not mentioned to indicate the fee. Evidently appeal against an award under the Land Acquisition Act is not an appeal arising out of a suit and so its subject-matter would not be governed either by S. 7 or Article 1. Therefore S. 8 was found necessary. Thus it is clear that the words "in the act" in Article 1 do not refer to S. 7 cl, 4 or S. 8 but to the schedules alone. Thus these premises also are fallacious and unsound.

IX. Coming to (*d*), if the conclusion contained therein be considered as based on the premises (*a*), (*b*) and (*c*) it is obviously wrong and cannot be accepted. But if it is taken to be a conclusion based on the omission of the word "appeal" after the word "suit" in S. 7, then also the injustice thereof can easily be proved. If S. 7 does not give the value of the subject-matter of appeals then the situation arises that the Court-Fees Act makes no provision at all for these. The Court-Fees Act is a fiscal enactment and it ought to be exhaustive and the position of no provision will lead to anomalies, hardship and injustice. Besides such narrow interpretation is against practice

1. (1899) I. L. R. 23 M 490. 2. (1915) I. L. R. 39 M 725 F. B.
3. (1909) 13 C. W. N. 815.

and natural justice. "It is in accordance with common sense and practice that the same relief should have the same value whether the appeal is made against its grant or refusal. If a mortgagee's suit for foreclosure was dismissed and he appealed for the relief claimed in the plaint how could the appeal be valued except by reading cl. IX,S.7 with schedule I, article 1. That clause could not be put aside on the ground that the valuation declared therein is only for suit." *Dhiraj Sing* v. *Rajaram* [1]. Appeal is only a transfer of a cause to a higher Court. The value of the same relief or cause must remain the same in appeal. Once it is arrived at in the first court either under sub-sec. 4 or sub-sec. 9, it cannot change. *Saniya* v. *Minammal* [2], *Hafiz* v. *Gulzar* [3] and *Hafiz* v. *Sobharam* [4]. These decisions can not be upheld if the conclusion in premise (*d*) be held to be correct.

Again the hardship and injustice being apparent the fiscal Act is to be construed liberally in favour of the subject unless prohibited by the Act. *Fulchand* v. *Bai Icha* [5], *Amant* v. *Bhajan Lal* [6]. In case of suits for partial redemption the rule is applied. *Vasudeo* v. *Madhava* [7].

So also the words "In suits or appeals arising out of suits" appear in Schedule II, Article 17, and under the narrow interpretation put on the word "suit" no appeal not arising out of suits mentioned in Article 17, when their money value cannot be estimated even approximately, will be governed by Article 17. Thus an appeal for future interest not granted by lower court would create a deadlock and the decision that such appeal comes under Article 17 (*Bhawani* v. *Kutub-unnissa* [8]) would be wrong. Appeal against a probate order which is a decree would give rise to the same difficulty and *Eva* v. *Hunter* [9] would be wrong. The word suit in S. 10 is held to include appeal. *Dayal Sing* v. *Ram Dhayal* [10]. Thus the narrow and literal interpretation placed on the word "suit" in S. 7 is wrong for the sake of harmonising the meaning of the same word as used elsewhere.

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1. (1910) 6 N. L. R. 164 at 167.
2. (1899) I. L. R 23 M. 490.
3. (1914) I. L. R. 36 All. 322.
4. (1884) I. L. R. 6 All 488.
5. (1887) I. L. R. 12 B. 98.
6. (1886) I. L. R. 8 All. 438 F. B.
7. (1892) I. L. R 16 M. 326.
8. (1905) I. L. R. 27 All. 559.
9. (1913) I. L. R 35 All. 448.
10. 109 P. R. 1912 F. B.=15 I. C. 468

The two leading cases *viz. Nepal* v. *Debi* [1] *Reference under Court Fees Act,* [2] and others following the same are cases where the appeals were made either only for reduction or increase of the amount found due as price for redemption or forclosure irrespective of any dispute of the right of redemption or foreclosure which is admitted by the opponent. Under such circumstances the appeals cannot be for the same relief as in the suit and no question of the application of cl. 9 of S. 7 arises and the particular decisions would be righ teven under the liberal interpretation. The fact is that the inference drawn from the fact that cl. 9 does not apply to these particular appeals, that cl. 9 does not at all apply to appeals is wrong. Where the relief in the suit under cl. IX remains the same in appeal, there cl. 9 would apply even to appeals In case like *Onkar* v. *Lakmichand* [3] and *Mahadeo* v. *Gorakad* [4] the mortgagor contended that the mortgage claim was satisfied from the usufruct of the mortgaged property enjoyed by the motrgagee who sued for foreclosure. First court found against the mortgagor and passed the usual foreclosure decrees. Mortgagors appealed in both cases alleging that mortgage was satisfied from the usufruct enjoyed by the mortgagee and nothing was due. Thus the mortgagors' appeals were for the total reduction of the amounts decreed. Here the question is "does the plea that the whole mortgage claim is satisfied mean that the mortgagor denies the right of mortgagee to foreclosure." If it means that he denies the right then his appeal would be valued according to cl. IX as the relief is the same in both the stages. But if it means otherwise the value would be the amount sought to be got over. In these cases the learned Judges do not consider this distinction and so their decision that as S. 7 does not apply to appeals the mortgagor must pay on the amount in dispute, cannot be considered to be on the point of distinction mentioned above. This way of distinction itself may be sound according to some and may be unsound according to some and technically one might hold that in the above cases the mortgagor does not deny the mortgagee's right to foreclose and so in this view the particular

1. (1905) I. L. R. 27 All. 447.
2. (1905) I. L. R. 29 M. 367.
3. (1909) 5 N. L. R. 180.
4. (1905) I. L. R. 30 All. 547.

decisions in *Onkar* v. *Lakmichand* [1] and *Mahadeo* v. *Gorakad* [2] may be right and not affect the rule of liberal interpretation.

X. Thus it is submitted with respect that the literal interpretation is wrong for the following reasons :—

1. It leads to the anomalous position of no provision for appeals.
2. It is against the principle of the unchangeability in value of the same relief.
3. It violates the rule of interpretation *viz.* the Act is to be construed in favour of the subject.
4. S. 7 and Schedule I Article I do not support it.
5. It is not in harmony with the meaning of suit as used in S. 10 and Article 17 Schedule II.
6. the existing decisions can be explained.

XI In conclusion the result is that all appeals whether arising out of suits or not, so far as their memoranda of appeals are concerned do come under Article I Schedule I unless provided for in Schedules but their subject matter or its value when they arise out of suits coming under S. 7 are governed by S. 7.

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SUMMARY OF ENGLISH CASES.

The Zaanland. (1918) P. 303.

Prize court—Claimants ceasing to be owners of goods—Failure of claim.

If goods seized as prize have ceased to belong to the claimants owing to their having parted with their rights to the goods after seizure to other persons, whether insurers or not, their claim must fail.

The Kangaroo. (1918) P. 327.

Admiralty—Ship under naval escort—Towed by another under order of naval escort—Acceptance of services by Master under protest—Salvage.

A ship along with several others under convoy, lagged behind owing to engine trouble. Another ship of the convoy offered to tow her and she was ordered to do so by the Naval commander of the escort. The master of the disabled ship accepted the services of the plaintff's ship under protest.

1. (1909) 5 N. L. R. 130. 2. (1905) I. L. R. 30. All. 547.

The defendants denied the plaintiff's right to salvage remuneration, as the ship could have reached a port of refuge without any help.

Held, that the services rendered were real and substantial as they enabled the defendants ship to remain with the convoy, and thus secured her against hostile attack, and that the plaintiffs were entitled to salvage remuneration.

The Clan Sutherland. (1918) P. 332.

Admiralty—Embezzlement of Salved property by salvers—Effect on remuneration.

Embezzlement of salved property by salvers entails forfeiture of awards as regards persons party or privy to the theft, and diminution as regards persons whose negligence enabled embezzlement to take place.

Cole *v.* **De Trafford**: (1918) 2 K. B. 523 (C. A.)

Master and servant—Negligence—Injury to servant from defect in master's premises—Liability of master—Maxim of Res ipsa loquitur*—Applicability.*

A master owes a duty to his servant to take reasonable care to maintain the premises in which the servant is employed in a condition free from any concealed danger of which the owner is or ought to be aware. Whether an action by a servant against his master for injuries sustained in his service be founded in contract or in tort, it is well established that in the absence of any special provisions the law presumes that the servant in entering into the contract of service undertakes as between himself and his master to run the ordinary risks which are incidental to the employment.

The well-known expression "res ipsa loquitur" means that an accident may by its nature be more consistent with its being caused by negligence for which the defendant is responsible than by other causes, and that in such a case the mere fact of the accident is *prima facie* evidence of such negligence. This principle may be applicable to a case of master and servant, but clearly it is more difficult of application, because in such a case the nature of the accident must be more consistent with the

master's personal negligence than with any other cause, including amongst such other causes the negligence of a fellow-servant.

Turpin *v.* **Victoria Palace Ltd.** (1918) 2 K. B. 539.

Damages—Contract by Music Hall Artist with Proprietor of Hall—Breach—No special provision for publicity or advertisement—Damages for loss of publicity if recoverable.

By a contract with the proprietor of a Music Hall, a professional singer agreed to sing at his theatre for some years at a specified salary at specified periods. The Music Hall in question happened to be one in which success for a performer would have acquired for her, high reputation and consequently higher prospects in future. The proprietor refused to allow her to perform according to the contract. In an action for breach of contract, the plaintiff claimed not only damages for loss of salary but also for loss of publicity.

Held, that in the absence of special provisions as to publicity and advertisement or evidence of the common intent of the parties that enhanced publicity should follow from the plaintiff's appearance in the defendant's theatre, damages under the latter head were not recoverable.

"There is no reason in law why a plaintiff in an action for breach of contract should not, in an appropriate case, recover damages for loss of publicity caused by the defendant's breach of contract. The difficulty of assessing the loss of possible future reputation can afford no reason for refusing damages in respect of such loss if otherwise it be recoverable. Whether damages for loss of publicity can be recovered in any case depends primarily on the nature and construction of the contract, and secondarily on the special circumstances known to both parties at the time of making the contract. In construing such contracts, the court is fully entitled to consider the vocation of the plaintiff and the characteristics and objects of his or her professional life.

C. A. Stewart and Co. *v.* **Plffs. Van Ommeren (London).** (1918) 2 K, B. 560.

Hire—Ship—Payment per calendar month in advance—Provision in charterparty for pro-rata payment for fractional

parts of month during which the vessel is off hire—Repayment of proportionate hire.

A ship was hired and the charter-party provided for the payment of hire for every calendar month in advance, and also if from various specified causes the ship was disabled and off hire, hire being paid for the fractional part of the month during which the vessel was on hire. The charterers brought an action for recovery of part of the hire proportionate to the time during which the vessel was off hire in the calendar month succeeding their date of payment of hire. It was contended for the ship-owners that the hire was for the 30 or 31 days succeeding the date of payment during which the vessel was in good condition.

Held on a construction of the contract, that the contention of the defendants was untenable and that the plaintiffs were entitled to succeed.

Ferrerheerd *v.* **London General Omnibus Co.** (1918) 2 K. B. 565 (C. A.)

Practice—Discovery—Statement obtained by defendants' agent signed by the plaintiff—Materials for brief—Plaintiff's misapprehension as to the person to whom the statement was made—No deceit—Privilege.

In view of anticipated action for damages for injury sustained by rash and negligent driving, the defendants' agent obtained a statement from the plaintiff and signed by her in order that it may be placed before their solicitors. The plaintiff was under the misapprehension that she was talking to her own solicitor's representative, but the agent did not deceive her into that belief. On summons for production of the document, the defendants claimed privilege from discovery, and their contention was upheld.

"The privilege is that of the litigant and is independent of the intention of the person making the statement."

Earl House *v.* **Commissioners of Inland Revenue.** (1918) 2 K. B. 584.

Super-tax—Deductions from income—Premiums on Polices of Life Assurance—Income-tax Act, 1842, Ss. 163, 164, 190 and Finance Act 1 1910, S. 66 sub I.

Where a person had mortgaged his property and also assigned policies of insurance effected on his life by way of mortgage, and covenanted with the mortgagee to pay the premiums on the life-policies and in case he neglected to do so gave a right to the mortgagee to pay them and charge them upon the mortgaged property, the question was, whether, in assessing for super-tax the income of the mortgagor, the premiums on the life-policies were to be deducted.

Held, that the assessee was entitled to deduct them, as they were "annual payments reserved or charged thereon whereby the income shall or may be diminished" within the meaning of the Income-tax Act, 1842, coupled with the Finance Act, 1910.

JOTTINGS AND CUTTINGS.

Repartee and Retort.—A story is told of one of the Judges of the High Court of England and a well-known barrister. During the hearing of a case the Judge left his seat to look for a law book and for a few minutes was hidden by the screen. Just as he disappeared from view the barrister hurried into Court, and, seeing the vacant chair, remarked in a loud tone:

"What.—Is the old fool gone to luncheon?"

To his chagrin, the Judge popped his head round the screen and replied:

"No, he has not gone yet."

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Eloquence, Tangled.—Mr. Benedict, of New York, in arguing the Weismiller case, referred to the great mass of testimony contained in the printed case, and said:

"There are a great many important questions of fact in this case. It would be impossible to make your honors understand them all; and for that reason, also, we ask that the nonsuit be set aside, and that the case be submitted to the judgment of twelve intelligent men."

"Gentlemen of the Jury," said an Australian lawyer, "the case for the crown is a mere skeleton—a mere skeleton gentlemen; for, as I shall presently show you, it has neither flesh, blood nor bones in it."

In the case of *Tucker* v. *Ely*, tried before the late Judge Morgan of New York, Mr. Maxon, in closing to the jury, said:

"The plaintiff and the defendant are both lawyers; all the witnesses who have been sworn in the case are lawyers; the counsel of course are lawyers; in fact, every one in any way connected with the case is a respectable member of the bar of this country, with the single exception of his honor on the Bench."

In an address to a Jury, Mr. Carson, Q. C., used this expressive language:

"Gentlemen of the Jury, the charges against my clients are only mare's nests which have been traced to their birth, and are found to have had neither origin nor existence."

In another case counsel said, "My client acted boldly. He saw the storm brewing in the distance; but he was not dismayed. He took the bull by the horns, and had him indicted for perjury."

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Motions.—The late Judge Blackman of Michigan, was very strict in requiring counsel to observe the rules of practice. In a case in which Attorney, T, had issued a *capias*, Attorney, L. moved to quash the writ, and, proceeding with his argument, was interrupted by the Judge:

"What are you reading from?"

"From a work on logic, your honor."

"Did you give Brother T, notice that you were going to read from a word on logic?"

"Of course not, your honor."

"Are you aware, sir, of the rule of court requiring notice to be given of matter likely to surprise the attorney on the other side?"

"Yes, your honor; but the rule has no application to a matter of this kind."

"I don't know, sir; I don't know. I know of nothing that would surprise T, more than logic, and if you haven't given him notice that you were going to read from a work of that kind, I can't permit you to read it."

Lawyer L., proceeding with his argument, was again interrupted by the Court:

"What are you reading from now, sir?"

"Green's Grammar, your honor."

"Did you give Brother T, notice that you were going to read from Green's Grammar ?"

"Certainly not, your honor."

"Well, sir, I know of nothing in this world, aside from logic, that would surprise Brother T, more than Grammar ; and if you haven't given him notice of your intention to read from Green's grammar, I can't permit you to read it, and I shall deny your motion with costs."

CONTEMPORARY LEGAL LITERATURE.

In the *Harvard Law Review* for December 1918 a full account is given of the Code Napoleon, its preparation and its promulgation. The legal chaos that prevailed in France before the Revolution had engaged the attention of eminent Frenchmen for centuries. A single code for the whole country was the dream of Louis XI in the fifteenth century, of Demoulin and Brisson in the sixteenth, of Colbert and Lamoignon in the seventeenth and of D'Aguesseau in the eighteenth. The States General of 1560 voted for a code, those of 1576 and 1614 again recommended one and the *National Assembly* made failure to effect legal reform one of the complaints against the Government but the idea never materialised till it was taken up by Napoleon. He appointed a committee consisting of four lawyers to frame a code and gave them a small period of four months to do the work. His choice of the personnel of the committee was made with the single idea of doing the work satisfactorily; for politically, the men were not in favour with Napoleon. He submitted the Code when framed to various judicial officers for comment giving them three months for it. With their comments the work was placed before the Legislative section of the Council of State and then the whole Council where Napoleon's direct participation commenced. The value of Napoleon's collaboration has been variously estimated but there is no question that but for his phenomenal energy and driving force, the code would have taken years to come out, if at all. From the Council it went to the Tribunate and the National Legislature and in spite of opposition, Napoleon's courage and resourcefulness saved the code and it was approved by the Legislature finally and promulgated. Unlike Justinian

code, the code Napoleon is purely a civil code and deals with only substantive rights ; the adjective law, the commercial law and the criminal law were dealt with by supplementary codes issued subsequently. The contents of the Code were largely extracted from Domat and Pothier. On wills, gifts and entails it is based on Grandes Ordinances of D'Aguesseau. The Livres De Costumes the decisions of Parlements, on questions of marriage and legitimation, the canon law and on the subject of legal age and mortgages the revolutionary legislation were freely resorted to. Speaking of Napoleon's contribution to to the Code a critic none too friendly says : " to Bonaparte's presence we may ascribe the fact that the Civil Law of France was codified not only with more scrupulosity than other portions but also with a livelier sense of the general interests of the State. What those interests were, Bonaparte knew. They were civil equality, healthy family life, secure bulwarks to property, religious toleration and a government raised above the howls of faction. This is the policy he stamped upon the code." The code has remained practically intact till now, the amendments being minor and almost all necessitated by the changed conditions of life. It has furnished the model for the codes of various countries. It has diffused the knowledge of law and made it comparatively easy for the ordinary Frenchman to become acquainted with the leading principles which govern the law of his own country.

" Title by adverse possession " is the heading of another article of interest in the same Review. In this matter law began by limiting the time within which actions should be brought for the recovery of possession. It did not expressly say what was to be the effect of not bringing the action within those periods. Later statutes have prescribed that the title of the owner is extinguished by such non-action. There seems to be no statutory law which makes adverse possession a source of title except in the case of incorporeal rights. But taken along with the well-recognised principle that a person in possession can defend it against all but the true owner the effect is much the same as a statutory conveyance of the property. In the case of incorporeal rights, the doctrine of *de facto possession* is not as widely recognised but acquisition of rights by adverse enjoyment for

the requisite period is universally recognised. The writer discusses the familiar question of tacking between independent trespassers. It is generally recognised that for adverse possession to be available there must be privity between the possessors of the land unless the statute requires an action to be brought within a specified period of the original decision in which case the question as to privity becomes inmaterial. If the statute runs without privity the first holder will acquire the right as against the subsquent trespassers as well as true owner by operation of the doctrine of *de-facto possession* above referred to.

Th Canadian Law Times for December 1918 contains a brief but interesting account of the Anglo-Saxon period of English law by Mr. Lefroy.