

---

**(1930) 11 MAD CK 0011**  
**In the Madras High Court**

|                                  |    |            |
|----------------------------------|----|------------|
| C. Abdul Hakim Sahib and Another | Vs | APPELLANT  |
| Chattanadha Aiyar and Others     |    | RESPONDENT |

---

**Date of Decision :** 26-11-1930

**Acts Referred:**

Court Fees Act, 1870 — Section 3  
Government of India Act, 1915 — Section 107

**Citation :** AIR 1931 Mad 457 : (1931) 60 MLJ 435

**Hon'ble Judges :** Venkatasubba Rao, J

**Bench :** Division Bench

---

## Judgement

Venkatasubba Rao, J.—This matter has been posted for being spoken to. While the ruling I gave the other day applies" generally to suits

removed to the High Court under Clause (13) of the Letters Patent," it cannot govern cases transferred from the City Civil Court, as a special Act

applies in that case. The question at present arises in such a case and I therefore desire to amplify my ruling so as to make it applicable also to

case"s of that description.

2. The questions I have to decide may be thus stated:

(1) When a suit is removed and tried by the High Court as a Court of Extraordinary Original Jurisdiction, are Court-fees leviable under the Court

Fees Act or under the High Court Fees Rules?

(2) When a suit filed in the City Civil Court is so removed, does it follow the general rule or is it governed by any special provisions ?

3. I must first turn to the Court Fees Act. Chapter II of that Act relates to fees in the High Courts and in the Presidency Small Cause Courts;

Chapter III to fees in other Courts and in public offices, (See titles at head of

these two Chapters.) What we have to deal with at present is

Chapter II, which consists only of three sections. The first of those sections is Section 3. The distinction between Section 3 and Section 4 must be

carefully observed. Whereas the latter section prescribes the Court-fee, the former, subject to an exception which I shall notice presently, merely

regulates the mode of collection. Section 4 enacts that no document specified in the first or the second schedule of the Act as chargeable with fees

shall be filed in or received by the High Court in certain cases, 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. The cases are thus specified:

4. Cases coming before the High Court:

(1) in the exercise of its extraordinary original civil jurisdiction;

(2) in the exercise of its extraordinary original criminal jurisdiction;

(3) in the exercise of its jurisdiction as regards appeals from the judgments of one or more Judges of the said Court or of a Division Court;

Original Side appeals are however excluded;

(4) in the exercise of its jurisdiction as regards appeals from the Subordinate Courts;

(5) in the exercise of its jurisdiction as a Court of reference or revision.

5. It follows from this section, that in cases coming up before the High Court in the exercise of its other jurisdictions, the fees prescribed by the

Court Fees Act are not, as such, leviable. For instance, in Original Side Suits and Original Side Appeals, the fees chargeable are not governed by

the Court Fees Act. Section 4 in its language resembles Section 6 which occurs in Chap. III. With these remarks, let me now examine the other

section to which I have referred, namely, Section 3.

6. It provides that the fees

(1) payable by the clerks and officers of the High Court by virtue of the power conferred by Section 15 of the High Courts Act, 1861 (now

Section 107 of the Government of India Act);

(2) chargeable in such Courts under No. 11 of the first and Nos. 7, 12, 14, 20 and 21 of the second schedule of the Act;

(3) chargeable in the Presidency Small Cause Courts and their offices; shall be

collected in the manner prescribed by the Act.

7. This is a most clumsily worded section. The Court Fees Act, it has been repeatedly pointed out, is full of defects and imperfections. (See the

valuable introduction to Mr. Satyamurthi Aiyar's Commentaries on the Court Fees Act, Ed. 1930). I am not aware of any decision which has

adverted to this particular defect; but Section 3, in my opinion, is clearly an instance of bad drafting. So far as its language goes, it does not profess

to prescribe a Court-fee; it purports on the contrary to deal only with the mode of collecting it. But by implication it prescribes a Court-fee in

certain cases. That is the effect of the second clause which runs thus:

or chargeable in each of such Courts under No. 11 of the first and Nos. 7, 12, 14, 20 and 21 of the second schedule to this Act annexed.

8. Of those mentioned above, Article 11 of the first schedule and Article 12 of the second, deal with certain matters falling within the\* High

Court's exercise of Testamentary Jurisdiction and similarly Articles 7, 14, 20 and 21 deal with matters pertaining to its Matrimonial Jurisdiction.

9. The effect of the two sections may then be shortly stated thus. In certain cases coming before the High Court, the Court Fees Act itself

prescribes the fee leviable. (Section 4 and Clause (2) of Section 3.) In all other cases" coming before that Court, the Court Fees Act lays down

only the mode of collecting the Court-fee. (Section 3, Clause (1).) In the case of the Presidency Small Cause Courts also, it merely prescribes the

mode of collecting the fee. (Section 3, Clause (3).)

10. As I have said, the question I have to decide is, what are the Court-fees leviable in a case tried by the High Court in the exercise of its

Extraordinary Original Civil Jurisdiction? The Court Fees Act says, that, in such a case, the fees leviable are those prescribed by the Act itself. But

the High Court has framed its own Court Fees Rules. In the preamble to those rules, it is stated that the tables of fees set forth shall be used and

observed in the High Court in all cases inter alia coming before it ""in the exercise of its ordinary and extraordinary original jurisdiction."" So far as

the Ordinary Original Civil Jurisdiction is concerned, the Court Fees Act, as I have shown, does not itself prescribe the fees chargeable. To that

extent, the High Court's power to frame its own rules is undoubted. But as regards the extraordinary original civil jurisdiction of the High Court,

the Court Fees Act directly applies. Can the High Court make rules for observance in cases falling within this jurisdiction, overriding the provisions of the Court Fees Act? This is the question I have now to decide. I must first mention that the preamble as it originally stood did not contain the words "and extraordinary." These words were added by an amendment made in 1927. Then we must enquire from where the High Court derives its power, to make rules in regard to its Court-fees. Barring Section 107 of the Government of India Act (repealed Section 15. of the High Court Charter Act), no other provision conferring the power is traceable. That section says that each of the High Courts may settle tables of fee's to be allowed to the Sheriffs, Clerks and Officers of Courts. Section 3 of the Court Fees Act, assumes that the fees payable to such clerks and officers are by virtue of this very section. It is these fees that Section 3 prescribes shall be collected in the manner provided by that Act, The mode of collection is regulated by S. .25, which enacts inter alia that the fees referred to in Section 3 shall be collected by stamps. My reason for referring to Section 3 of the Court Fees Act in this connection is, that it fortifies my view that the High Court's power to make rules is derived from Section 107 of the Government of India Act. That section is not happily worded. Its marginal note indicates that it deals only with the High Court's powers in respect of Subordinate Courts. Clauses (a), (b), (c) and (d) deal only with such Courts. But Clause (e) is more general and deals with all Courts including the High Courts. [The word "such" is absent in Clause (e).]

11. If, then, it is from Section 107 that the High Court derives its power to make rules, does it place any limitation on such power? The proviso to Section 107 says that the table of fees to be framed shall not be inconsistent with the provisions of any Act for the time being in force. The Fees Rules which the High Court has framed in respect of its extraordinary original civil jurisdiction are inconsistent with the provisions of the Court Fees Act. To that extent, they are ultra vires of the High Court. It therefore follows that when a suit is transferred under Clause (13) of the Letters Patent, the Court-fees leviable are governed (subject to the exception to which I shall presently refer) by the Court Fees Act and not by the High Court Fees Rules.

12. The same result follows from another line of reasoning. It has been held that

the powers of the High Court in dealing with suits transferred under Clause (13) of the Letters Patent are those which, but for the transfer, might have been exercised by the Court from which the suit is transferred. 18 CWN 1089 (Privy Council) . This is enacted by Clause (20) of the Letters Patent, which runs thus:

And we do further ordain that, with respect to the law or equity and rule of good conscience to be applied to each case coming before the said

High Court of Judicature at Madras, in the exercise of its Extraordinary Original Civil Jurisdiction, such law or equity and rule of good conscience

shall be the law or equity and rule of good conscience which would have been applied to such case by any local Court having jurisdiction therein.

13. Then as to suits transferred from the City Civil Court, Section 14 of the Madras City Civil Court Act (VII of 1892) provides:

When, u/s 13 of the Letters Patent for the High Court, dated the 28th day of December, 1865, or u/s 25 of the CPC (corresponding to Section 24

of the present Code--Act V of 1908) the High Court has removed for trial by itself any suit from the City Court, fees on the scale for the time

being in force in the High Court as a Court of Ordinary Original Civil Jurisdiction shall be payable in that Court in respect of the suit and

proceedings therein:

Provided that, in the levy of any such fees which, according to the practice of the Court, are credited to the Government, credit shall be given to

the plaintiff in the suit for any fee which in the City Court he has already paid under the Court Fees Act, 1870, on the plaint.

14. This section expressly enacts that the fees leviable shall be on the scale in force, in the High Court, as a Court of Ordinary Original Civil

Jurisdiction. It has been argued, that on a true construction, this section does not apply to the pleadings, but only to such proceedings as are taken

subsequent to the transfer: This argument fails to give effect to the words ""the suit"" as contrasted with ""and proceedings"" in the above section.

Moreover, the proviso makes the matter perfectly clear. It says, that in the levy of the fees., credit shall be given to the plaintiff for any fee which in

the City Court, he has already paid on the plaint. How is this credit to be given? Let us take a concrete case Supposing on the plaint when it was

filed in the City Civil Court, a stamp of the value of Rs. 130 was affixed, the suit

is then transferred to the High Court. Credit has to be given under the section for Rs. 130. It specially confers on the plaintiff that benefit. When credit is being given, is the total of the Court-fees payable in the High Court to be taken into account or such total, minus the institution fee? Under the High Court Fees Rules, there are certain Court-fees payable in addition to the stamp on the plaint; for instance, a sum of Rs. 10 is leviable on the hearing of a suit for the first day and of Rs. 20 for every subsequent day; for each exhibit marked at a hearing, a sum of Rs. 2 has to be paid. If the total Court-fee is taken into account in giving credit, the result would be to make the plaintiff pay the excess fee on the plaint. But if the argument advanced is accepted, it leads to this. You must only take into account the total minus the institution fee--that is, the Rs. 130, which the plaintiff has already paid, goes merely in reduction of such fees as are payable exclusive of the stamp on the plaint. In other words, the plaintiff in a suit transferred, may say:

I have already paid Rs. 130 in the City Civil Court. Give me credit to that extent in the hearing and exhibit fees.

15. The result would then be, that for his plaint in the High Court, he would have paid no fee at all.

16. A construction that leads to such an absurdity must be rejected. The procedure indicated under the section is this. A certain amount is the aggregate of the Court-fees payable in the High Court, the institution fee being but one item of such Court-fees. Towards this total, he must get credit for the Court-fee already paid on his plaint.

17. It is also contended that the policy of the Court Fees Act is to forbid the filing of a document not properly stamped and that when a plaint is received in the High Court by reason of the transfer of a suit, it cannot be said that there is a filing of the; plaint. This may or may not be a correct statement of its policy; but I have nothing to do with it. The present point is governed by an express statutory provision and it is my duty to give effect to it. I therefore hold that in cases removed from the City Civil Court, the Court-fees payable are those in force in the High Court as a Court of Ordinary Original Civil jurisdiction.

18. The suit now transferred is what was filed in the City Civil Court. The written statement contains a counter-claim. The plaint and the statement

bear stamps of the value prescribed by the Court Fees Act; but if the High Court Fees Rules apply, a higher fee is payable, certain excess sums in respect of the plaint and the counter-claim, which the office has demanded. In my judgment, these sums must be paid. I direct the plaintiff to pay them.