

**In Re: Secy. of State**

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**SooperKanoon Citation :** [sooperkanoon.com/799343](http://sooperkanoon.com/799343)

**Court :** Chennai

**Decided On :** Oct-07-1932

**Reported in :** AIR1933Mad321

**Appellant :** In Re: Secy. of State

**Judgement :**

**Walsh, J.**

1. This is a petition filed on behalf of the Government to revise the court-fee levied by the District Judge, Coimbatore, on a memorandum of objections in A.S. No. 277/30. The appeal has been admittedly disposed of and the initial question is whether, assuming the stamp-fee is insufficient, there is any power under the Court-fees Act or otherwise to levy the deficit court-fee. It is obviously a mere academic exercise to argue the petition if there is not. The learned Government Pleader with great diligence and fairness has collected all the cases and they are practically unanimous against him as he admits. In *Mahadei v. Ram Kishen Das* (1885) 7 All. 528 the two learned Judges Mahmood and Oldfield differed. A single Judge of the same Court held in a later decision *Mohammad Ismail v. Liyaquat Husani* : AIR1932 All316 that recovery of deficient court-fees could not be made once the appeal was dismissed and he quotes there a recent decision of the Hon'ble the Chief Justice of that Court to the same effect.

2. Jotra Mohan Sen v. Secy. of State AIR 1919 Cal 194, Abdulla v. Secy, of State AIR 1925 Lah 131 and Radhika Raman Prasad Singh v. Mt. Janki Kuer AIR 1919 Pat 9, are also against the view that the deficient court-fees are recoverable in such a case and there is not a single case in which the opposite view is held. In the face of these decisions it seems hardly worth discussing the matter further. I had doubted on seeing the petition whether, assuming the appeal had been disposed of, any action could be taken to recover the deficient stamp-fee, if there is a deficit. The decisions quoted make me certain that it is not recoverable. Section 6, 12(2) and 28, Court-fees Act, do not apply, Order 33, Rules 10 and 12, Civil P.C., are obviously special provisions confined to pauper suits. Sections 13, 14 and 15, Court-fees Act, deal with refund of court-fees, a quite different matter and any inherent power of the Court under Section 151, Civil P.C., in cases not directly governed by them: vide Thammayya Naidu v. Venkataramanamma AIR 1932 Mad 438 to grant refund cannot be invoked in the matter of collecting deficient duty. This application is therefore dismissed.

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