Code, to what extent relief was desired. What was intended by the decree was to declare in favour of the decree-holder a constantly-recurring right which would give rise to an action for damages on the violation of it by the judgment-debtors.

We shall reverse the orders of the Courts below and dismiss the application with costs.

NOTES.

[*See* (1888) 12 Bom. 416 where a similar decision was given.]

[4 Mad. 220.]

APPELLATE CIVIL.

The 14th October, 1881.

PRESENT :

MR. JUSTICE KINDERSLEY AND MR. JUSTICE MUTTUSAMI AYYAR.

Muttammal.....(Plaintiff Appellant

AND

Chinnana Gounden.....(Defendant) Respondent.*

Procedure under Section 229 of Act VIII of 1859—Change of jurisdiction between date of original suit and of claim, effect of—Jurisdiction to hear appeal—Law in force at date of appeal governs.

The subject-matter of an appeal should be valued for the purpose of jurisdiction according to the law in force at the date of the appeal and not of the suit which has led to it.

For the purpose of jurisdiction, a claim under Section 229 of Act VIII of 1859 is a fresh suit and not a continuation of the suit in which the claim is made, so that, where by reason of a change in the law as to the mode of valuing suits for the purpose of jurisdiction between the date of the original suit and the claim the Court that dealt with the original suit ceases to have jurisdiction over the subject to matter of the claim, that Court cannot try the claim.

THE plaintiff in this case (O. S. 393 of 1876) sued her husband's brother, Rangasami Nayak in O. S. 65 of 1873 in the Court of **[221]** the District Munsif of Salem to recover one-eighth of the Mitta of Karukalvadi, and obtained a decree against him. In attempting to execute this decree the plaintiff was resisted by the defendant (in this case) who claimed to be in possession of the lands as purchaser thereof at a Court sale in O. S. 16 of 1872 in the District Court of Salem.

The defendant's objection was disallowed by the Munsif and, on appeal, by the District Judge, but the High Court in April 1876 reversed their decision, and this suit was registered in October 1876 in pursuance of the directions of the High Court under Section 229 of the Code of Civil Procedure (Act VIII of 1859).

The Munsif gave judgment in favour of the defendant and the plaintiff appealed to the High Court.

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* Appeal No. 37 of 1880 against the decree of A. Chendriah, District Munsif of Salem, dated 13th August 1877.

The first ground of appeal was that the District Munsif had no jurisdiction because the value of the property in dispute was Rs. 9,000, but a preliminary objection having been taken by the respondent that no appeal lay to the High Court, this latter question was first disposed of on August 12th, 1881.

Devarajayyar for the Appellant.

Hon. *T. Rama Rau* for the Respondent.

Upon this question the Court (KINDERSLEY and MUTTUSAMI AYYAR, JJ.) ruled as follows :—

This is a regular appeal against the decree of the District Munsif of Salem, and the preliminary question for decision is whether the appeal lies to this Court. The subject-matter of the appeal as well as of the suit from which it arises is one-eighth of a mitta or permanently-settled estate in the district of Salem, and its value for the purpose of jurisdiction is, under Section 14 of Act III of 1873, and Clause 5, Section 7 of Act VII of 1870, ten times the permanent assessment payable upon it, or Rs. 9,531-4-0 and under Section 11, Regulation VI of 1816, and Regulation III of 1833, as construed in Thiagaraya Mudali *v.* Ramanuja Chari (6 M. H. C. R., 151) its annual produce is, according to the finding of the District Munsif, not more than Rs. 1,000. The Suit 393 of 1876 from which this appeal arises was a claim registered and numbered as a regular suit in 1876 under Section 229, Act VIII of 1859, by reason of the obstruction occasioned by the respondent to the exe-**[222]**cution of the decree in Suit 65 of 1873 which was brought before the 1st March 1873, when Act III of 1873 came into force. We think that the subject-matter of an appeal should be valued for the purpose of jurisdiction according to the law in force at the date of the appeal and not of the suit which has led to it. Clause 2, Section 13, Act III of 1873 (Madras), deals with decrees as well of District Munsifs as of Subordinate Judges in which the subject-matter of the suit may exceed Rs. 5,000, while Clause 2, Section 12, limits the jurisdiction of District Munsifs to Rs. 2,500, and Section 16, Act VII of 1870, and Schedule 1 appended to that Act show that when an appeal is presented against the whole of a decision, the value of the subject-matter of the suit and of the appeal is the same.

According to the law in force at the date of this appeal, the subject-matter of the suit exceed Rs. 5,000 in value, and we are therefore of opinion that whether the District Munsif had or had not jurisdiction to try the Suit 393 of 1876, and whether it is treated as distinct from Suit 65 of 1873 or as its continuation, the appeal would lie to this Court.

We direct that the appeal be argued.

The question then arose as to whether the Munsif had jurisdiction to try the Suit 393 of 1876.

Mr. *Spring Branson* for the Respondent.

Act VIII of 1859 was in force when the order of the High Court was passed, and the procedure to be adopted is laid down in Section 229. The Court whose decree is resisted in execution is bound to proceed to investigate the claim in the same manner and with the like power as if a suit had been instituted by the decree-holder against the claimant under the provisions of Act VIII of 1859.

(KINDERSLEY, J.—The Munsif would not have any *power* in a suit like this.)

Madras Act III of 1873 did not alter the procedure; if we had not come in by way of claim, then Act III of 1873 would have applied.

Had we filed a suit, we should have had to ask for an injunction to restrain the party in the other suit till the case was decided, but we come in under a provision which says in effect " Come in **[223]** within time by way of claim, and the Court is bound to entertain the claim as provided in the Code of Civil Procedure."

(KINDERSLEY, J.—What would have been the Court's *power*?)

To examine witnesses, &c. If this is not so, it would come to this, that the Civil Courts Act excludes the provisions of the Civil Procedure Code.

(KINDERSLEY, J.—We must imagine a suit brought to recover the sum Rs. 6,000).

It is treated as a suit.

(KINDERSLEY, J.—There is no stamp required, but it is registered as a suit.)

The decree-holder should not be referred to a regular suit. Maharaj Dheraj Mahatab Chand Bahadur *v.* Mussamut Nadurynissa Bibee (4 W. R., 82).

The object of the inquiry is merely to see whether the property is defendant's and subject to the decree or not.

Before the Civil Courts Act came into force we could ask for a decision and the Civil Courts Act does not alter the law. The question is merely—Is the obstruction *bonâ fide* or not?

(MUTTUSAMI AYYAR, J.—Your contention is that the words of the section mean, 'as if a suit for the property had been filed at the date of the suit,' when there was jurisdiction.)

It was held in Ravloji Tamaji *v.* Dholapa Raghu (I. L. R., 4 Bom., 123) that an investigation of a claim is not a fresh suit. The claim is to be investigated *as if a suit*, &c., but it is clear from the direction to stay execution or otherwise that it is to be considered as part of the suit.

The Civil Courts Act only refers to *suits* to be filed *thereafter*.

Devarajayyar.—The proceeding was commenced after the Civil Courts Act came into force, and is therefore affected by it (Madras General Clauses Act, Section 4).

The following **Judgments** were delivered on October 14, 1881:—

Muttusami Ayyar.—In this case we have already held that the subject-matter of the appeal is to be valued according to the law in force at the date of the appeal, and that this appeal was, therefore, properly preferred to this Court. The question which I desired to consider at the conclusion of the argument was **[224]** whether the District Munsif had jurisdiction to entertain the suit which gave rise to the appeal on the ground that it was a claim registered as a suit in October 1876 under Section 229 of Act VIII of 1859. It is not denied for the respondent that, if an ordinary suit were brought in October 1876 to recover the property in dispute from the respondent, and if it were valued according to the law then in force for the purpose of determining the Court of competent jurisdiction, the District Munsif would have no jurisdiction; but it is contended that a claim registered as a suit in execution of a decree passed in an ordinary suit is substantially not a fresh suit, but an execution proceeding or a claim in continuation of the original suit, and that the District Munsif who had jurisdiction over the original suit had also jurisdiction to investigate the claim. In support of this contention, reliance is placed on Ravloji Tamaji *v.* Dholapa

Right (I. L. R., 4 Bom., 123) Section 229 directs that "if it shall appear to the satisfaction of the Court that the resistance or obstruction to the execution of the decree has been occasioned by any person other than the defendant claiming to be *bonâ fide* in possession of the property on his own account, the claim shall be numbered and registered as a suit between decree-holder as plaintiff and the claimant as defendant, and the Court shall proceed to investigate the claim in the same manner and with the like power as if a suit for the property had been instituted by the decree-holder against the claimant under the provisions of this Act, and shall pass such order for staying execution of the decree or executing the same as it may deem proper in the circumstances of the case." The expression "with the like power as if a suit had been instituted" is inconsistent with an intention to confer any extraordinary or special jurisdiction in addition to that of treating a claim as a regular suit. It appears further that Section 229 is one of those sections in Act VIII of 1859 which were framed to render a decree for immoveable property effectual against persons who are in possession on their own account and who were not made parties to the decree, and to ensure an adjudication on their title as between them and the decree-holder as if the latter had paid full stamp duty, and as if his petition of complaint had been a regular plaint. It does not appear to be necessary for the purpose of carrying out this intention **[225]** that the Court whose decree has been obstructed should have a special pecuniary jurisdiction. Further, the contention that the claim is a continuation of the old suit is inconsistent with the direction that it should be numbered and registered as a fresh suit. It is then said that the Court which is directed to investigate the claim is the Court the execution of whose decree has been obstructed; but it must be remembered that the section expressly provides that this Court is to have no larger power in dealing with the claim than it would have over the original suit. It seems to me that Section 229 gives a special jurisdiction only in those cases in which the value of the property claimed is not at the date of the claim in excess of the ordinary power or the pecuniary limit of the jurisdiction of the Court that passed the decree. Suppose that the claimant relied on his adverse possession for more than 12 years in proof of his title, and that it extended to 12 years if it were reckoned up to the date of the claim, but fell short of 12 years if reckoned up to the date of the original suit, is the claim to be treated as if it were a suit instituted on the day the claim was registered or on the day the original suit of which it is said to be a continuation was filed? There can be no doubt, I think, that it must be treated as if it were a suit filed on the day the claim was made, for the purpose of Limitation. If this view is correct, I do not see why the date of its institution should be referred back to the date of the old suit for the purpose of jurisdiction. But for a change in the law as to the mode of valuing a suit for the purpose of jurisdiction, the Court that has jurisdiction over the original suit would also have jurisdiction over the claim, unless the claim is limited to a part of the immoveable property for which a decree has been obtained. In this case there is this peculiar feature, *viz.*, that at the date of the claim the District Munsif ceased to have jurisdiction over the original suit itself, and in the view that the investigation of the claim under Section 229 as a suit is in substance an extension of the scope of the original suit, the District Munsif could exercise no jurisdiction, as the suit in so far as it relates to the extension must be taken to have been instituted at the date of the claim. The case of Ravloji *v.* Dholapa Raghu is an authority for the proposition that where a First-class Subordinate Judge dealt under Section 229 of Act VIII of 1859 with a claim to lands very much below Rs. 5,000 in value in

execution of a decree for immoveable property over [226] Rs. 5,000 in value, an appeal lay from his order direct to the High Court under Section 26 of the Bombay Civil Courts Act. The question now before us, *viz.*, whether the Court that dealt with the suit in which the decree was passed would retain jurisdiction to deal with the claim registered under Section 229, although under the Civil Courts Act it would have no jurisdiction over that suit, if it were instituted at the date of the claim, was not considered or decided in that case. It is true that it is stated in the judgment that the claim is not a fresh suit, but a continuation of the original suit, but reference is made in support of this opinion to Section 331, Act X of 1877, which, as it originally stood, directed that the claim be investigated as if a suit had been instituted by the decree-holder against the claimant under the provisions of the Specific Relief Act, 1877, Section 9.* This section has since been modified by the Amending Act under which the claim is to be dealt with as if it were a regular suit instituted under Chapter V of the Code of Civil Procedure. I am, therefore, inclined to hold that the claim is to be regarded as a fresh suit instituted for the recovery of the property claimed from the claimant, and that where, by reason of a change in the law as to the mode of valuing suits for the purpose of jurisdiction between the date of the original suit and the claim, the Court that dealt with the original suit ceases to have jurisdiction over it, it could not exercise jurisdiction over the claim, the value of which is in excess of its pecuniary jurisdiction at the date of the claim. On this ground the decision of the District Munsif must be reversed and the suit must be transferred to the District Court for disposal on the merits. It should be further directed that the costs hitherto shall be costs in the cause.

Kindersley, J.—I agree generally in the opinion expressed by my learned brother. Doubtless for some purposes a proceeding under Section 229 of Act VIII of 1859 is a continuation of proceedings in execution. But in substance it is a regular suit between parties, one of whom was not a party to the decree which is in course of execution. The decision upon such proceedings is of the same force as a decree in an ordinary suit, and no fresh suit can be entertained between the same parties on the same cause of action.

Then the subject-matter of the proceedings under Section 229 was by the Madras Civil Courts Act placed beyond the pecuniary limits of the District Munsif's jurisdiction; and the proceeding was, [227] in my opinion, so far in substance a fresh suit that the District Munsif had no power to commence proceedings as if it was merely a continuation of the original suit. It appears that the decree-holder should have applied to the District Court or to the High Court under Section 6 of the Code of 1859 to transfer the case to the District Court. I agree to the decree and order proposed.

NOTES.

[For purposes of *appeal* (as distinct from *valuation*) claim proceedings are treated as fresh suit:—(1895) 22 Cal. 330; (1890) 13 Mad. 520; (1890) 14 Bom. 627.

In Full Bench case of (1884) 8 Mad. 548 the majority doubted the correctness of the ruling in 4 Mad. 220 but MUTTUSAMI AYYAR, J., was of the same opinion. *See* also his remarks in (1890) 13 Mad. 520.]

* [*q. v. supra*, 4 Mad. 217.]