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The judgment of the Court (PEARSON, J., and OLDFIELD, J.,) was delivered by

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PEARSON, J.—The lower appellate Court has dismissed the appeal preferred to it apparently on the ground that the appellant had not paid a sum of Rs. 400 demanded from him as court-fees due in respect of the consequential relief sought by him in the suit on the plaint and the memorandum of appeal, and has on the same ground also dismissed his claim which had been dismissed on the merits by the Court of first instance. The lower appellate Court has assumed Rs. 3,500, the market-value of the property as alleged by the defendants, to be the value of the consequential relief sought, but the consequential relief sought was not the possession of the property, but the removal of an attachment from it.

The value of the relief sought should have been stated in the plaint. It is not stated therein; and the Court of first instance did not cause the defect to be supplied. The plaint states the value of the property to be Rs. 1,441, but that amount cannot be taken to be the value of the relief sought. Under the Court Fees Act, the valuation of the relief sought rests with the plaintiff and not with the Court. In this particular instance the declaration of the right claimed necessarily carried with it the consequential relief sought, of which the value was merely nominal. We accordingly set aside the lower appellate Court's decree and remand the case to it for fresh disposal on the merits. The costs of this appeal will follow the event.

Cause remanded.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Spankie.

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THAKURYA (DEFENDANT) v. SHEO SINGH RAI AND ANOTHER (PLAINTIFFS).*

Suit for money due on accounts stated—Act IX of 1871 (Limitation Act), sch. ii, art. 62—Act XV of 1877 (Limitation Act), s. 2, sch. ii, art. 64—“Title” acquired under Act IX of 1871—Suit for money lent.

The plaintiff sued the defendant for money due upon accounts stated between them in December, 1874, when Act IX of 1871 was in force. Such accounts

* Second Appeal, No. 937 of 1879, from a decree of R. M. King, Esq., Judge of Meerut, dated the 20th June, 1879, reversing a decree of Babu Kashi Nath Biswas, Subordinate Judge of Meerut, dated the 24th December, 1878.

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were not signed by the defendant. The suit was instituted after Act XV of 1877, which repealed Act IX of 1871, had come into force. *Held* that the plaintiff's right to sue upon such accounts within three years from the date the same were stated was not a "title" acquired under Act IX of 1871, within the meaning of s. 2 of Act XV of 1877, which, under the provisions of that section, was not affected by the repeal of Act IX of 1871, and the suit was not governed by the provisions of Act IX of 1871, but by those of Act XV of 1877, and that, therefore, the accounts not being signed by the defendant, the plaintiff could not claim the benefit of art. 61 of sch. ii of the latter Act, but must be regarded as suing merely for money lent.

THE facts of this case are sufficiently stated for the purposes of this report in the order of the High Court remanding the case to the lower appellate Court.

Mr. Cochrane and *Babu Jogindro Nath Chaudhri*, for the appellant.

Mr. Colvin and *Munshi Hanuman Prasad*, for the respondents.

The High Court's (STUART, C. J., and SPANKIE, J.,) order of remand was as follows :—

ORDER OF REMAND.—The plaintiff-respondent sued to recover a sum of money upon an account stated on the 14th December, 1874, between defendant and himself, which, however, was not signed by the defendant or his agent duly authorised in this behalf. The Subordinate Judge held that the claim was barred by art. 61, sch. ii of Act XV of 1877, the new law of limitation. It is not necessary to give his reasons, which indeed are not very clear: one item of Rs. 15, however, the Subordinate Judge thought might be in time under art. 61. On the merits, however, he held that there had been no adjustment of accounts on the day named, and he appears to have discredited the plaintiff's claim altogether, including the item of Rs. 15 referred to above, and he dismissed the suit. The plaintiff in appeal to the Judge urged that Act IX of 1871 applied and not the more recent Act. The Judge, considering the bearing of s. 2, Act XV of 1877, of the words "nothing herein shall be deemed to affect any title acquired under Act IX of 1871," held that plaintiff had acquired a right under that Act to sue on accounts stated within three years from the date upon which the accounts were stated, and also that Act XV of 1877 did not bar the claim. On the merits the defendant had contended that all his accounts with plaintiff had been settled and closed in 1927 Sambat. He had failed to establish this plea, producing no accounts of his

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own, though on a former occasion he had relied upon his books in proof of money being due to him. On the other hand, the Judge, for reasons assigned by him, held the books produced by plaintiff and other evidence on his behalf to be entirely satisfactory in proof of the truth of the claim, which he decreed in full with costs, reversing the decree of the Subordinate Judge.

It is contended that the suit is certainly governed by the provisions of Act XV of 1877, that no balance in adjustment of account was proved, and that the reasons assigned by the Judge for accepting the plaintiff's accounts were insufficient. It appears to us that the Judge has misapprehended s. 2, Act XV of 1877. The words "title acquired, or to revive any right to sue barred under that Act, or under any enactment thereby repealed," do not affect the claim in the way suggested by the lower appellate Court: a right of action is one thing and the completion of a title is another thing. The plaintiff's right of action did not accrue by reason of Act IX of 1871, but because, according to his averment, on a certain day a sum of money was found to be due to him from the defendant on accounts stated between them. The limitation law simply provided a period within which the right of action must be exercised. The plaintiff acquired in this case no "title," to use the words of the Act, under Act IX of 1871, or any other Acts thereby repealed. Act XV of 1877 is certainly the law of limitation to be applied to the suit.

But the claim as brought upon an account stated is not covered by art. 64, Act XV of 1877, inasmuch as the accounts though stated in writing are not signed by the defendant or his agent duly authorised in this behalf. The plaintiff, therefore, cannot claim the benefit of this article, and if the suit is to be entertained at all, the claim must be brought under some other article in sch. ii, if the plaintiff desires to save limitation. The Judge has found in favour of the correctness of the plaintiff's accounts and the indebtedness of the defendant, and has, on the evidence, held that defendant did not settle and close accounts with plaintiff as contended in Sambat 1927. Assuming, then, that the plaintiff cannot avail himself of the limitation provided in art. 64, Act XV of 1877, he may be regarded as suing merely for money lent to the defendant, and

it may be that some portion of the moneys lent may not be barred by limitation and therefore is claimable from the defendant, and under the Judge's view of the case any such sum would still be due. The Subordinate Judge has suggested that Rs. 15 are within the period of limitation, if art. 64 does not apply to the claim, but this would not be sufficient to enable us to dispose of the appeal.

The Judge should ascertain and determine whether any and what sums included in the claim are within the period of limitation of three years from the dates of the loans of such sums, and return his finding on this issue. On receipt of the finding one week will be allowed for objections, and at the expiration thereof the appeal will be decided.

Cause remanded.

Before Mr. Justice Pearson and Mr. Justice Straight.

SHEO PARTAB NARAIN SINGH (DEFEENDANT) v. SHEO GHOLAM SINGH (PLAINTIFF),*

Appeal when presented—Memorandum of Appeal insufficiently stamped—Act X of 1877 (Civil Procedure Code), s. 51 (b)—Limitation.

For the purposes of limitation, an appeal is preferred when the memorandum of appeal is presented to the proper officer, and not when, where the memorandum of appeal is insufficiently stamped and is returned in order that the deficiency may be supplied, it is again presented (1).

When an appellate Court returns an insufficiently stamped memorandum of appeal in order that it may be sufficiently stamped, it should fix a time within which the deficiency is to be supplied (2).

THE defendant in this suit preferred an appeal from the decree of the Court of first instance on the 23rd June, 1879, within the period of limitation allowed by law. The lower appellate Court, on the 5th July, 1879, being of opinion that the memorandum of appeal was written upon paper insufficiently stamped, returned it to the defendant in order that the requisite stamp-paper might be supplied, without fixing any time within which the same should be supplied. On the 18th July, 1880, the defendant, having supplied the requisite stamp-paper, again presented the memorandum of

* Second Appeal, No. 1322 of 1879, from an order of J. W. Power, Esq., Judge of Ghazipur, dated the 18th July, 1879, rejecting a memorandum of appeal from a decree of Munshi Manmohan Lal, Munsif of Ghazipur, dated the 26th May, 1879.

(1) See also *Jagan Nath v. Lalman*, I. L. R., 1 All., 260, and the Indian Limitation Act, s. 4, Explanation.

(2) See also *Jagan Nath v. Lalman*, I. L. R., 1 All., 260.

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