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of this application, and directing that the appeal be restored to the file of the pending appeals in the Court of the District Judge of Gházipur, and that it be disposed of according to law; and we further order that the costs of this application shall abide the result of the appeal.

Application allowed.

APPELATE CIVIL.

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 February 10.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Knox.

MANGAL SEN (PLAINTIFF) v. RUP CHAND AND ANOTHER (DEFENDANTS).^{*}

*Suit pending in Court of Subordinate Judge with Small Cause Court powers—
 Transfer to Munsif's Court—Civil Procedure Code, s. 25—Act IX of 1887
 (Provincial Small Cause Courts' Act) s. 35.*

The plaintiff filed his suit as a Small Cause Court case in the Court of a Subordinate Judge having Small Cause Court powers. During the pendency of the suit the Subordinate Judge took leave and his successor was not invested with Small Cause Court powers. In consequence of this the District Judge made an order under s. 25 of the Code of Civil Procedure, transferring all cases above the value of Rs. 50 then pending before the Subordinate Judge in his capacity as a Small Cause Court, to the Munsif to be tried as Munsif's Court cases. The Munsif had Small Cause Court powers up to Rs. 50. The plaintiff's suit was for Rs. 69. The case was accordingly tried by the Munsif and the plaintiff appealed, his appeal coming before the same Subordinate Judge before whom the suit was filed.

Held that, granted that the suit was a Small Cause Court suit (which was not decided), whether s. 25 of the Code of Civil Procedure or s. 35 of the Provincial Small Cause Courts Act (Act IX of 1887) was applicable, it would remain throughout a Small Cause Court suit and be subject to the incidents of such a suit.

This was reference from the Subordinate Judge of Saháranpur under circumstances which are fully detailed in the judgment of the Court.

EDGE, C. J. and KNOX, J.—This is a question referred to us by the Subordinate Judge of Saháranpur, under s. 617 of the Code of Civil Procedure. A suit was filed as a Small Cause Court suit in the Court of the Subordinate Judge of Saháranpur, the Subordinate Judge having had Small Cause Court powers conferred upon him,

^{*} Miscellaneous application No. 112 of 1890, under s. 617 of the Civil Procedure Code.

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While the suit was pending before that Court, the Subordinate Judge went on leave. The gentleman who was appointed to officiate in the absence of the Subordinate Judge had not had conferred upon him Small Cause Court powers. The District Judge made an order transferring this suit and others to the Court of the Munsif of Saháranpur to be tried and disposed of as a Munsif's case. The Munsif had had conferred upon him Small Cause Court powers to the extent of Rs. 50. The suit in question was one for Rs. 69. The plaintiff being dissatisfied with the decree of the Munsif, appealed to the District Judge of Saháranpur, who transferred the appeal to the Court of the Subordinate Judge. In what we are going to say we are not deciding whether the suit was a suit of the nature of Small Cause Court suits or cognizable by a Court of Small Causes as such. That may be a question yet to be decided by the Subordinate Judge. We merely assume for present purposes that it was a Small Cause Court suit. On that assumption we give the following opinion :—It is not necessary to decide whether or not the decision in *Kauleshar Rai v. Dost Muhammad Khan* (1) was right in law and applies to this case. If s. 25 of the Code of Civil Procedure applies here, and the order was in fact made under that section, the last clause of that section would apply, and the Munsif, for the purposes of this suit, must be deemed to have been a Court of Small Causes competent to try it as such. The transfer to the Munsif's Court was made after the Subordinate Judge, who had Small Cause Court powers, had proceeded on leave. If, by reason of this fact, s. 25 of the Code of Civil Procedure did not apply, then we must apply s. 35 of the Provincial Small Cause Courts Act (Act IX of 1857). That section requires to be carefully looked at. It is quite possible that the Legislature may not have expressed in the section what it intended, but we must construe the section as we find it. Clause (1) of the section is as follows :—

“Where a Court of Small Causes or a Court invested with the jurisdiction of a Court of Small Causes, has from any cause ceased to have jurisdiction with respect to any case, any proceeding in

(1) I. L. R. 5, All., 274.

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relation to the case, whether before or after decree, which, if the Court had not ceased to have jurisdiction might have been had therein, may be had in the Court which, if the suit out of which the proceeding has arisen were about to be instituted, would have jurisdiction to try the suit."

The suit in the section referred to is a Small Cause Court suit, and the proceeding in the section is a proceeding in the Small Cause Court suit. The result is, according to our construction of the section, that when, by reason of a Small Cause Court ceasing to exist a suit is transferred to another Court, the proceedings still continue to be Small Cause Court proceedings, and for this purpose the Court to which the transfer is made must be treated as if it was a Court of Small Causes having jurisdiction to hear the suit transferred to it. In other words, whatever the intention of the Legislature was, we read s. 35 of Act IX of 1887 in the same sense that we read the concluding paragraph of s. 25 of the Code of Civil Procedure. With this expression of opinion the record will be returned to the Court of the Subordinate Judge of Saharanpur.

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February 11.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL (PLAINTIFF) v.
BHAGWANTI BIBI AND OTHERS (DEFENDANTS).*

Suit in forma pauperis—Appeal—Right of Government to appeal in respect of Court-fee on portion of plaintiff's claim dismissed—Civil Procedure Code, ss. 411, 412.

In a suit *in forma pauperis* the District Judge decreed the plaintiff's claim in part and dismissed it in part, but omitted to make any provision for payment to Government of the court-fee on the portion which was dismissed. The Secretary of State, not having been a party to the litigation in the Court below, then preferred an appeal in respect of the court-fee on that portion of the plaintiff's claim which had been dismissed.

Held that such an appeal would lie; though the more suitable procedure would have been for the Government to have applied, through the Collector, to the Court of

* First Appeal No. 125 of 1889 from a decree of W. T. Martin, Esq., District Judge of Mirzapur, dated the 16th March 1889.