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that if within 6 months from the date of this our decree, the defendant do pay into this Court the sum of Rs. 5,684 to the credit of the plaintiff, the plaintiff's suit will stand dismissed and the defendant will retain possession of the 6 annas 4 pies of mauza Sirsia. If the money is not paid within the stipulated period, the plaintiff's decree for possession will stand, and he will be entitled to enforce it according to law. In either event the parties will bear their own costs of this litigation.

TYRRELL, J.—I concur.

Appeal decreed.

REVISIONAL CIVIL.

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 February 7.

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

MAHABIR SINGH AND ANOTHER (PETITIONERS) v. BEHARI LAL AND OTHERS (OPPOSITE PARTIES). *

Act I of 1887 (General Clauses Act) s. 3, cl. (13)—Act XII of 1887 (Bengal, N.-W. Provinces and Assam Civil Courts Act) s. 21, cl. (a)—“Value of the original suit”—“Amount or value of the subject matter of the suit”—Jurisdiction—Civil Procedure Code, s. 2—Decree, definition of.

For the purpose of determining the proper appellate Court in a Civil suit what is to be looked to is the value of the original suit, that is to say, the “amount or value of the subject matter of the suit.” Such “amount or value of the subject matter of the suit” must be taken to be the value assigned by the plaintiff in his plaint and not the value as found by the Court, unless it appear that, either purposely or through gross negligence, the true value of the suit has been altogether misrepresented in the plaint.

An order of a District Judge returning a memorandum of appeal to be presented in the proper Court on the ground that the value of the suit is beyond the pecuniary limits of his jurisdiction is not a decree within the meaning of s. 2 of the Civil Procedure Code.

THE facts of this case sufficiently appear from the judgment of the Court.

Honble Mr. *Spankie* and Mr. *C. H. Hill*, for the appellants.

Munshi *Ram Prasad* and Munshi *Kashi Prasad*, for the respondents.

*Miscellaneous application under s. 622 of the Civil Procedure Code.

EDGE, C. J. and KNOX, J.—This is an application to us to exercise our powers of revision under section 622 of the Code of Civil Procedure.

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The order to which this application relates was one by which the late District Judge of Ghazipur returned a memorandum of appeal to the present applicants for presentation to this court. The District Judge declined to hear the appeal on the ground that the appeal lay to this Court and not to the District Court.

The suit out of which this appeal arose was one for pre-emption of a share in a village. The plaintiffs in their plaint valued the share at Rs. 4,000 and brought this suit in the Court of the Subordinate Judge of Ghazipur. The defendants valued the share at Rs. 8,160. The Subordinate Judge having found the value of the share to be Rs. 7,464-10-3 made a decree for pre-emption on payment of that amount. From that decree the plaintiffs, who are the applicants here, filed an appeal in the Court of the District Judge. The District Judge, having found the value of the share to be Rs. 7,526, was of opinion that he had no jurisdiction to hear the appeal, and consequently passed the order to which this application relates.

Mr. *Kashi Prasad* for the respondents raised a preliminary objection that s. 622 of the Code of Civil Procedure did not apply, his contention being that either a first appeal from the order lay or that the applicants had a second appeal.

Mr. *Hill* for the applicants contended that no appeal lay from the order in question, and that this was a case within s. 622.

In First Appeal from Order No. 145 of 1889 we have to-day held that the order in question was not appealable as an order.

We are also of opinion that the order in question is not a decree as defined by s. 2 of the Code of the Civil Procedure. The order did not decide the appeal. On the contrary it was an order by which the District Judge, on the ground of jurisdiction, refused to decide the appeal and returned the memorandum of appeal to the

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appellants, so that they might have their appeal decided by this Court.

The construction to be placed upon the clause defining a "decree" in s. 2 of the Code of Civil Procedure was considered by this Court in *Balkaran Rai v. Gobind Nath Tiwari* (1). The question then arose—Had the District Judge jurisdiction to hear and determine the appeal? If he had, then he failed to exercise a jurisdiction vested in him by law.

That question turns upon the construction of the words "value of the original suit" in clause (a) of s. 21 of Act XII of 1887, read with clause (13) of s. 3, of Act I of 1887. By the latter clause—"value with reference to a suit shall mean the amount or value of the subject matter of the suit."

Mr. *Kashi Prasad* contended that "the value of the subject matter of the suit" is the value which may be found by the Court hearing the suit. On the other hand Mr. *Hill* contended that the "value of the subject matter of the suit" is the value stated by the plaintiff in his plaint.

There has been much difference of opinion in the courts in India, including this Court, on this question of how the jurisdiction is to be ascertained. It is a question not without difficulty.

It is, however, clear that by s. 21 of Act XII of 1887, the jurisdiction of the District Judge in appeal is to be determined by the value of the original suit and not by the value of the appeal. It appears to us that the "amount" of the subject matter of the suit mentioned in clause (13) of s. 3 of Act I of 1887 must mean the amount, that is, the amount in money, which the plaintiff claims to recover in his suit and not the amount which the Court may give him a decree for, and that for purposes of jurisdiction the amount of the subject matter of the suit must consequently mean the amount as stated by the plaintiff in his plaint.

It seems to us that the same principle must be applied when we have to ascertain the meaning of the "value of the subject matter

(1) I. L. R. 12, All., 129.

of the suit" in the same clause, and that the value of the subject matter of the suit must be the value as stated by the plaintiff in his plaint. The opinion which we express is that which was held by this Court in *Jag Lal v. Har Narain Singh* (1), and by the High Court at Bombay in *Lakshman Bhutkar v. Babaji Bhutkar* (2). The fact that in the Allahabad case s. 22 of Act VI of 1871 was in question, and that in the Bombay case the section in question was s. 25 of Act XIV of 1869 does not appear to us to make the decisions in these cases inapplicable as authorities on the subject which we are now considering. Mr. Justice Straight and Mr. Justice Tyrrell inform us that in a case which unfortunately has not been reported they held that the "value of the subject matter in dispute" within the meaning of s. 90 of Act VI of 1871 was the value stated by the plaintiff in his plaint. Whilst holding that the value of the subject matter of the suit for the purposes of jurisdiction is the value as stated by the plaintiff in his plaint, we entirely agree with the learned Judges in the Bombay case to which we have referred "that the jurisdiction of the Court properly having cognizance of the cause is not to be ousted by unwarrantable additions to the claim," and that an exaggerated claim which cannot be sustained and which there is no reasonable ground for expecting to sustain, brought for the purpose of getting a trial in a different Court from the one intended by the Legislature, is substantially a fraud upon the law and must be rejected, whether it arises from mere recklessness or from an artful design to get the adjudication of one Judge instead of that of another. The words which we have used are almost precisely those of the Bombay High Court. Such a case as is referred to would be an instance of an attempt to evade s. 15 of the Code of Civil Procedure. The result is that as the applicants, the plaintiffs in the suit, had in their plaint valued the subject matter of their suit at Rs. 4,000, the District Judge had jurisdiction to hear and determine the appeal, and, as he failed to exercise the jurisdiction vested in him by law, we, under section 622 of the Code of Civil Procedure, make our order setting aside his order, the subject

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(1) I. L. R. 10, All., 524.

(2) I. L. R. 8, Bom., 31.

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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.

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

MANGAL SEN (PLAINTIFF) v. RUP CHAND AND ANOTHER (DEFENDANTS).²

*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.