

order of refusal under s. 558 cl. 27. Consequently an appellant in such a case is not without a remedy. Mr. *Chaudhri*, for the appellant, contended that there was no such remedy open to his client in this case, as our brother Mahmood, having had no jurisdiction to hear and dispose of the appeal, would have no jurisdiction to set aside his own order and readmit the appeal. We need not decide that point, for if our brother Mahmood had no jurisdiction to entertain an application in this case under s. 558 of the Code, it is quite clear to us that he could have entertained an application for review of judgment under s. 623 of the Code of Civil Procedure, and if he had granted the application for review, as it is probable he would have done, he could have ordered that the appeal be heard by a Bench of two Judges who had jurisdiction to hear it. Having come to the conclusion that the order of the 4th of November 1891 was an order and not a decree, and that, whether our brother Mahmood had jurisdiction or not to make it, it is in fact made under s. 556 of the Code, we are bound to hold that this appeal does not lie. We accordingly dismiss it. As this appeal has arisen out of an unfortunate oversight on the part of our brother Mahmood of two matters which excluded his jurisdiction on that day, we dismiss the appeal, but without costs.

Appeal dismissed.

[See also *Pohkur Singh v. Gopal Singh*, Weekly Notes, 1892, p. 50—ED.]

Before Mr. Justice Knox and Mr. Justice Burkitt.

RADHA PRASAD SINGH (PLAINTIFF) v. PATHAN OJAH AND ANOTHER
(DEFENDANTS).*

1893
May 16.

Act XII of 1881 (N.-W. P. Rent Act), ss. 93, cl. (h), 189—Act I of 1887 (General Clauses Act) s. 3, cl. (13)—Valuation of subject-matter of suit—Appeal valued for purposes of jurisdiction at a higher amount than the suit.

Where a plaintiff in a suit under s. 93 of the N.-W. P. Rent Act valued his suit at Rs. 46-3, which valuation was not objected to either by the defendant or the Court, and subsequently, being defeated in his suit, preferred an appeal which he valued at a very much greater amount. *Held*, that he must be bound by the valuation put by him

* Second Appeal No. 1049 of 1890 from a decree of H. W. Reynolds, Esqr., Additional Judge of Ghazipur, dated the 16th June 1890, confirming a decree of Maulvi Muhammad Wasi, Deputy Collector of Ballia, dated the 30th September 1889.

1893

RADHA
PRASAD
SINGH
v.
PATHAN
OJAH.

upon his suit and could not by alleging a greatly enhanced value obtain an appeal which would not have lain on the valuation stated in the plaint. *Ram Raj Tewari v. Girnandan Bhagat* (1) distinguished; *Mahabir Singh v. Behari Lal* (2), referred to.

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

Mr. *A. H. S. Reid*, for the appellant.

Mr. *Abdul Majid*, for the respondents.

KNOX and BURKITT, JJ.—The suit out of which this second appeal arises was a suit for ejectment of the respondents who were tenants at fixed rates of the appellant and was laid under s. 93, cl. (h) of the N.-W. P. Rent Act. In his plaint the appellant says in distinct terms:—"The rent of one year of the land claimed is Rs. 46-3, which is the sum at which the suit has been valued." The claim was rejected by the Court of first instance, and in the memorandum of appeal the appellant entered a plea in different terms, but in terms quite as distinctly stated as those in his plaint, to the effect that the value of the disputed property was Rs. 875. The lower appellate Court held that, as the appellant himself rightly or wrongly valued his suit at Rs. 46-3, he could not now alter that value, and it therefore held that no appeal lay to it. It is now contended before us that the District Judge erred in so holding; that the value for the purpose of jurisdiction is the real value of the subject-matter in dispute, and not the value which was stated by the appellant in the plaint solely for the purposes of the Court-fees Act. In support of this contention our attention was directed to the case *Ram Raj Tewari v. Girnandan Bhagat* (1), and we were asked to remand the case for an inquiry as to what was the real value of the subject-matter in dispute. Now s. 189 of the North-Western Provinces Rent Act of 1881 provides that an appeal shall lie to the District Judge from the decision of certain Courts in all suits mentioned in s. 93 in which, *inter alia*, the amount or value of the subject-matter exceeds Rs. 100. There is abundant authority as to the meaning which should be assigned to the words "amount or value of the subject-matter." The interpretation they should bear is that

(1) I. L. R. 15 All. 63: s. c. Weekly Notes 1892, p. 240.

(2) I. L. R. 13 All. 320: s. c. Weekly Notes, 1891, p. 107.

assigned to the word "value" in s. 3, cl. (13) of Act I of 1887 (General Clauses Act, 1887). In that Act "value" used with reference to a suit means "the amount or value of the subject-matter of the suit." This Court has already held in the case of *Mah. bir Singh v. Behari Lal* (1), that for the purposes of determining the proper appellate Court in a civil case the value of the subject-matter of the suit must be the value assigned by the plaintiff in his plaint and not the value as found by the Court, fraud or negligence excepted. As regards the precedent quoted, *Ram Raj Tewari v. Girnandan Bhagat* (2), we fully agree that the principle laid down for the valuation of suits to eject tenants at fixed rates is the correct one, and we should follow that principle in this case if we could arrive at the stage when it would become necessary for us to determine what the value of the subject-matter was. In this case, as the appellant had in his plaint himself put a value on the relief he asked for, and as that value was not questioned by the other side and was accepted by the Court of first instance, we are not in a position now to entertain the question as to whether it was or was not the correct value of that subject-matter. We may add that we have consulted the learned Judges who gave the decision in the case of *Ram Raj Tewari v. Girnandan Bhagat* (2), and we are authorized by them to say that the question as to the value stated in the plaint being the governing value throughout all the subsequent proceedings was not brought to their notice or argued in the case before them. We therefore are of opinion that the learned Judge was right in holding that no appeal lay to him. We therefore dismiss the appeal with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Tyrrell.

THE QUEEN-EMPRESS v. LAKHPAT.

Criminal Procedure Code, s. 560—Compensation for frivolous or vexatious complaint.—Such compensation inapplicable to a complaint under s. 110 of the Code.

The award of compensation under s. 560 of the Code of Criminal Procedure must be in respect of a frivolous and vexatious accusation of an offence of which the accused

(1) I. L. R. 13 All. 320; s. c. Weekly Notes, 1891, p. 107.

(2) I. L. R. 15 All. 63; s. c. Weekly Notes 1892, p. 240.

1893

RADHA
PRASAD
SINGH
v.
PATHAN
OJAH.

1893

May 16.