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law. That would be a good reason probably for an application to correct that decision ; but, so long as it stands, it is a decision of a Court of competent jurisdiction, and cannot be interfered with by the present proceedings. If the parties wish to dispute the correctness of the decision, they should take other steps. The decree of the lower appellate Court is affirmed, and this appeal is dismissed with costs.

Appeal dismissed.

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July 18.

Before Sir W. Comer Petheram, Kt., Chief Justice, and Mr. Justice Straight.

DEBI DAS (DEFENDANT) v. LACHMAN SINGH (PLAINTIFF).*

Small Cause Court suit—Suit to recover a share of money recovered by co-plaintiff under a decree—Act XI of 1865 (Mufassal Small Cause Courts Act) s. 6.

Held that a suit to recover a share of money which had been recovered by a co-plaintiff under a decree was a claim for money due on a contract, within the meaning of s. 6 of the Mufassal Small Cause Courts Act (XI of 1865), and was therefore a suit of the nature cognizable by a Court of Small Causes, in which, under s. 586 of the Civil Procedure Code, no second appeal could lie.

THE facts of this case are sufficiently stated for the purposes of this report, in the judgment of Petheram, C. J.

Pandit *Ajudhia Nath*, for the appellant.

Babu *Jogindro Nath Chaudhri*, for the respondent.

PETHERAM, C. J.—When this case was called on, it was urged as a preliminary objection that, the suit being one cognizable by a Court of Small Causes, and being in respect of a claim of less than Rs. 500 in value, there was no second appeal to this Court. This objection has been argued at some length before us, and I am of opinion that it must prevail, and that the appeal to this Court will not lie. The action was brought to recover a share of money recovered under two decrees passed in suits in which the plaintiff and defendants, or the persons through whom they claim, were plaintiffs-decree-holders. The plaintiff and defendants in this suit, or those through whom they claim, were joined in these two suits as plaintiffs, and this suit is brought to recover the share which belonged to one of those plaintiffs as between him and his co-plaintiff. In my opinion, the suit is founded on a contract, and is with-

* Second Appeal No. 1276 of 1884, from a decree of Maulvi Muhammad Sami-ulla Khan, Subordinate Judge of Aligarh, dated the 23rd July, 1884, affirming a decree of Pandit Rajnath, Munsif of Aligarh, dated the 30th August, 1883.

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in the terms of s. 6 of the Mufassal Small Cause Courts Act, which runs as follows:—"The following are the suits which shall be cognizable by Courts of Small Causes, namely, claims for money due on bond or other contract, &c."

In my opinion, this is a claim for a debt due on a contract. When parties are jointly interested in money, and one of them becomes possessor of a larger share than properly belongs to him, there is an obligation or contract implied that he will pay to the other the portion he has become possessor of in excess of that to which he was entitled. The best way of describing a contract is to say that it is a state of things in which two or more minds mutually agree upon the same thing, and in respect of some object in which all are interested. It may be the express agreement of the parties, stating in terms their intentions and wishes, or it may be an agreement implied from their acts. Where there is no express agreement, the state of mind or the agreement may be gathered or implied from the acts of the parties. In the case before us, it is clear that the parties, or the persons through whom they claim, joined together for the purpose of recovering money in which they were jointly interested. Now, it is clear that it was implied that they should divide the moneys so realized. It was implied also, in the absence of an express agreement, that if one party recovered or realized more than his share, that party was under an obligation to the other in respect of the excess so recovered to pay the same to him. That being so, the suit was one based on a contract within the meaning of s. 6 of the Mufassal Small Cause Courts Act, and was cognizable by the Court of Small Causes. By s. 586 of the Code, second appeals in such cases are prohibited. The preliminary objection must prevail, and this appeal must be dismissed with costs.

STRAIGHT, J.—I am of the same opinion. It appears to me that this suit is of a description very common in England. It is a receipt of money by a person with a legal obligation on him to pay the same to another person. There are two questions to be considered. First, does the money belong to the plaintiff? And secondly, was it received for the plaintiff? If these questions are answered in the affirmative, the case involved all the conditions of

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a contract. It was a debt between the parties which could be recovered. The learned Chief Justice has defined a contract, and has shown that the facts alleged by the plaintiff constitute a contract within the meaning of s. 6 of Act XI of 1865. I never had any doubt that the preliminary objection to the hearing of this appeal was a sound one, and that the suit was of the nature of those cognizable by Small Cause Courts.

I may add that there are no less than nine cases reported in the *Weekly Notes* and the *Indian Law Reports* of decisions of this Court on this point, that a contract exists under circumstances such as that asserted by the plaintiff in this suit. Under these circumstances, an appeal does not lie to this Court, and this appeal must be dismissed with costs.

Appeal dismissed.

1885
July 18.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

SHIB LAL (DECREE-HOLDER) v. RADHA KISHEN (JUDGMENT-DEBTOR.)*

Act XV of 1877 (Limitation Act), sch. ii, No. 179—“ Step in aid of execution of decree.”

R, in a suit against S and other persons, obtained a decree on the 24th December 1878, S being exempted from the decree, and being awarded costs against the plaintiff. In executing his decree, R, on the 16th June, 1880, sought to set on the costs awarded to S against the amount due to himself. On the 6th August, 1880, S preferred objections to this course. On the 19th July, 1882, S applied for execution of his decree for costs.

Held that the application was barred by limitation, inasmuch as art. 179 (4) of the Limitation Act requires that the decree-holder should make a direct and independent application for execution on his own account, and it was not sufficient to satisfy the requirements of the law to offer objections under the circumstances under which they were offered in the present case.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the Court.

Pandits *Ajudhia Nath* and *Nand Lal*, for the appellant.

Babu *Jogindro Nath Chaudhri*, for the respondent.

STRAIGHT and TYRRELL, JJ.—This appeal is presented under the following circumstances:—The plaintiff-respondent sued the defendant-appellant and certain other persons. He got a decree

* Second Appeal No. 51 of 1885 from an order of W. T. Martin, Esq., Officiating Additional Judge of Aligarh, dated the 27th March, 1885, affirming an order of Maulvi Muhammad Sami-ulla Khan, Subordinate Judge of Aligarh, dated the 9th May, 1884.