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and no dissent is expressed to the first mentioned ruling. In the present case in our opinion there was no question whatever of proprietary title raised between the parties. The only question raised was the question of the effect and nature of the private arrangement which had been come to between the parties; and which, in truth and in fact related only to the mode of partition. This was a matter entirely for the Revenue Court. We allow the appeal and set aside the decree of the learned District Judge. The appellant will have his costs in all courts.

Appeal decreed.

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April 5.

Before Mr. Justice Richards and Mr. Justice Tudball.

PARMANAND AND ANOTHER (PLAINTIFFS) *v.* JAGAT NARAIN (DEFENDANT).*

*Civil Procedure Code (*1882*), sections* 215*A and* 216*—Principal and agent—Suit for rendition of accounts and payment of sum found due to principal—Defence that per contra money was due to agent—Court competent to grant a decree to agent.*

In a suit brought by the principals against an agent for rendition of accounts the agent expressed himself ready and willing to render accounts, but alleged that on such accounts being taken money would be found to be due to him; he did not, however, specifically pray for a decree for the sum alleged to be due to him. The Court granted a decree to the agent upon the finding that money was in fact due to him. *Held* that the decree was justified with reference to the provisions of sections 215A and 216 of the Code of Civil Procedure, 1882.

THE facts of this case were as follows:—

The plaintiffs brought the suit against their agent for rendition of accounts and for recovery of such amount as might be found to be due by him. The defendant, in his written statement, admitted the agency, signified his willingness to render accounts, and stated that on the accounts being taken it would be found that a sum of Rs. 2,056 was due to him from the plaintiffs. He did not, however, specifically pray for a decree for that or any other amount. The Subordinate Judge found that nothing was due to the plaintiffs, but that Rs. 487 were due to the defendant, and dismissed the suit. The plaintiffs appealed, and the defendant also filed cross-objections under section 561, Civil Procedure Code, in which he stated "that the lower court should have passed

* Second Appeal No. 179 of 1909, from a decree of Louis Stuart, District Judge of Meerut, dated the 21st of December, 1908, confirming a decree of Soti Raghubans Lal, Subordinate Judge of Meerut, dated the 24th of September, 1908.

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in favour of the defendant a decree for the amount which was found due to him after settlement of account." He did not, however, pay the court fees on the amount claimed. The District Judge dismissed the plaintiff's appeal, and finding that the sum of Rs. 1,887 was due to the defendant, gave him a decree for that amount conditional on his paying the requisite court fees in respect of both courts. This condition was fulfilled. The plaintiffs thereupon appealed to the High Court against the decree passed in defendant's favour.

The Hon'ble Pandit *Sundar Lal* (with him The Hon'ble Pandit *Moti Lal Nehru*) for the appellants, contended that the court should not have passed a decree in the defendant's favour as the defendant had not prayed for a decree or claimed a set-off. The question was whether the court could rightly grant the defendant a decree when he had not claimed a set-off under the provisions of section 111, Civil Procedure Code (1882) or paid the requisite court fee with the written statement. He cited *Nan Karay Phaw* v. *Ko Htaw Ah* (1). The issue framed was, "what sum, if any, is due to the plaintiff?" That was the only question to be decided, and the court should not have gone beyond it to find what sum was due to the defendant and to pass a decree for the sum.

Dr. *Tej Bahadur Sapru* (with him Babu *Durga Charan Banerji*, for the respondent, was not called upon.

RICHARDS and TUDBALL, JJ.—This appeal arises out of a suit in which the plaintiffs claimed that an account should be taken between them and the defendant as their agent and a decree might be granted for the amount that should be found due on the taking of accounts. The defendant never denied his agency. He said he was always ready and willing to render an account, and in paragraphs 19 and 20 of the written statement, he alleged that there was money due by the plaintiffs to him which he had demanded. The accounts have been taken, and on the taking of accounts the court has found that no money was due to the plaintiffs by the defendant, but that there is a sum due by the plaintiffs to the defendant. A decree has been given in favour of the defendant for the amount so found due. The only point argued in

(1) (1886) I. L. R., 13 Calc., 124.

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the present appeal is that the defendant not having claimed a set-off against the plaintiff's claim, no decree could be passed in his favour for any money due to him from the plaintiff on the taking of accounts. In our opinion this plea is not well founded. It is true that the plaintiffs in their plaint claimed that a decree might be granted for whatever might be found due on the taking of accounts; nevertheless the plaintiffs' suit was in truth and in fact a suit for accounts against an agent. In our opinion such a suit necessarily involves an undertaking by the plaintiff to pay to the defendant any sum that may be found due to the defendant by him on the taking of accounts, and it is unnecessary that the defendant should plead a set-off or counter claim. We think that the decree of the court below was quite justified by the provisions of sections 215A and 216 of Act XIV of 1882, which was in force at the time of making the decree. In the written statement the defendant expressly stated that on taking of accounts a certain sum would be found due to him. The appellants rely on the ruling in the case of *Nan Karay Phaw* v. *Ko Htaw Ah* (1). In our opinion this ruling does not apply. There the defendant denied the partnership and had made an independent claim against the plaintiff. We dismiss the appeal with costs.

Appeal dismissed.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.

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April 8.

CHUNNU DATT VYAS (DEFENDANT) *v.* BABU NANDAN (PLAINTIFF).*

Civil Procedure Code (1908), section 9—Suit for declaration and injunction — Right to perform Ram Lila, such performance not being connected with any shrine or temple and being supported by purely voluntary contributions—Suit not maintainable—Jurisdiction.

The plaintiff, a minor, sued for a declaration that he had the right to perform certain religious pageants in Benares and to receive subscriptions in connection therewith, and claimed an injunction to restrain the defendant from interfering with that right. It was found that these pageants had been performed for many years past by the plaintiff's father, grandfather and great grand-father with the aid of voluntary subscriptions from the Hindu community. But the pageants were not connected with any particular temple, shrine or sacred spot, nor did the plaintiff or his ancestors hold any office by virtue of which they were under any obligation to perform such pageants. The performance thereof

* Appeal No. 101 of 1909, under section 10 of the Letters Patent.

(1) (1886) I. L. R., 13 Calc., 124.