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dered to be one confirming the assessment. As already stated, the order of the Assistant Commissioner in this case, properly described, is not an order dismissing the appeal but is an order refusing to entertain the appeal.

For the reasons stated above we hold that section 66(2) of the Income-tax Act does not apply, and the High Court cannot direct the Commissioner to state a case for the decision of the question of law said to arise from the order of the Assistant Commissioner. We express no opinion as to whether the question which the applicant desires to be considered by the High Court is a question of law.

The application is dismissed.

Before Mr. Justice Niamat-ullah and Mr. Justice Bajpai

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PEAREY LAL (APPLICANT) *v.* AMNA KHATUN (OPPOSITE PARTY)*

Agra Tenancy Act (Local Act III of 1926), section 242(d)—"Amount of revenue payable" is in issue—Question of amount does not include question of liability to pay any revenue at all—Whether appeal lies to civil court—Jurisdiction.

Clause (*d*) of section 242 of the Agra Tenancy Act is limited to cases in which the amount of the revenue payable is in dispute. Its language is not wide enough to include cases in which the liability to pay any revenue at all, as between two individuals, is the question in issue. Where the defendant totally repudiates his liability to pay any revenue, which he says is wholly payable by the plaintiff, he is not disputing the amount of the revenue payable by him, and clause (*d*) of section 242 does not apply and give appellate jurisdiction to the civil court.

Mr. *Panna Lal*, for the applicant.

Dr. *N. P. Asthana*, for the opposite party.

NIAMAT-ULLAH and BAJPAI, JJ.:—This is a reference by the Board of Revenue under section 267 of the Agra Tenancy Act. The facts as stated in the order of reference and as admitted before us by counsel on both sides are as follows. A certain mahal, or a portion thereof, was sold nearly a hundred years ago. One of

*Miscellaneous Case No. 452 of 1934.

the covenants in the sale deed was that the vendor would retain a portion of the land included in the mahal, or part thereof, as the case may be, and that the vendee should pay the land revenue in respect of the land thus reserved to the vendor. The vendee and his representatives have hitherto paid the revenue in terms of the covenant already mentioned. There was a settlement in 1308 Fasli. In making the assessment it was noted by the Settlement Officer that the vendee had been paying the revenue in respect of the land in possession of the vendor and would continue to do so in future. Recently the representatives of the vendees appear to have reconsidered their position and instituted a suit for recovery of a sum, less than Rs.200, representing the revenue paid by them in respect of the land in possession of the vendor under the sale deed above referred to. The representatives of the vendor contested the claim, relying on the covenant in the sale deed and on the practice which prevailed ever since the date of sale. The Assistant Collector in whose court the suit had been instituted dismissed it. An appeal was preferred by the plaintiff to the District Judge who dismissed it on the ground that no appeal lay to him. A second appeal was preferred in this Court which was likewise dismissed. The judgment of the learned single Judge who heard the second appeal makes a reference to section 242(*d*). It may be that "(*d*)" is a clerical error for "(*a*)" as the body of the judgment may be construed to indicate. The main ground on which the learned Judge held that no appeal lay on the civil side was that the value of the subject-matter did not exceed Rs.200. The aggrieved party moved the Commissioner in revision and the latter made a report to the Board of Revenue which has resulted in the present reference.

The Board of Revenue seem to be of opinion that the learned single Judge of this Court overlooked the provisions of section 242(*d*) which, according to the Board,

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applies to the present case. It is undeniable that an appeal lies to the District Judge from the decree of an Assistant Collector, *inter alia* when "the amount of the revenue annually payable has been in issue in the court of first instance and is in issue in appeal" in suits under sections 221, 222, 223, 224, 226 and 227. It should be noted that clause (*d*) of section 242 quoted by us above is limited to cases in which the *amount* of the revenue payable is in dispute. Its language is not wide enough to include cases in which the *liability* to pay revenue as between two individuals is the question at issue. The learned advocate for the plaintiff has strongly pressed upon us the contention that where the defendant repudiates his liability to pay revenue, he in effect disputes the amount of the revenue payable by him. To quote his own words, he argues that "according to the defendant the revenue payable by him is zero and not the amount claimed by the plaintiff". We are unable to uphold this contention. The language of section 242(*d*) clearly contemplates cases in which the amount of revenue payable in respect of a land is in dispute. Questions regarding the liability of particular lands and individuals owning interest therein have been advisedly left out of the jurisdiction of civil courts. Such questions fall within the purview of certain provisions of the Land Revenue Act. If we accept the contention of the learned advocate for the plaintiff and assume an extended jurisdiction, a conflict of jurisdiction may arise in view of the provisions of section 233 of the United Provinces Land Revenue Act. Accordingly we hold that the language of section 242(*d*) should not be strained in the manner suggested and that only when the amount of revenue, as distinguished from liability in respect thereof, is in dispute an appeal lies to the District Judge. As the amount of revenue annually payable is not in dispute in this case no appeal lay to the District Judge. We answer the reference accordingly.