

1882

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the same Act on the others. But he need not pay on the value of the buildings raised by the defendant. This is not a proper factor in the estimate of the plaintiff's reliefs. He must pay on the title he asserts, the thing he wants to recover, or the equities he has to vindicate, not on any considerations of what cost or charges or loss his success in his suit may entail on the defendant.

The answer therefore in this as well as in the other referred case should be that the value of the buildings which may have to be demolished is not to be taken into account in estimating the the value of the suit for the purposes of the Court-Fees' Act or of the Bengal Civil Courts' Act VI of 1871.

OLDFIELD, J.—The suit is to obtain possession of a piece of land, to have demolished certain buildings which the defendants have erected, and to have a right of easement decreed.

The first relief sought comes under v (d), s. 7, Court-Fees' Act, and the court-fee will be computed according to the market-value of the subject-matter, that is the land, irrespectively of the buildings of which possession is not sought, subject to the operation of s. 9 of the Court-Fees' Act.

The second relief sought is in the nature of a mandatory injunction, and the third an easement, coming under (d) and (e), iv, s. 7, Court-Fees' Act, and the fees will be computed according to the amount at which the reliefs sought are valued in the plaint subject to the provisions of s. 54 of the Code of Civil Procedure. The value of the buildings sought to be removed should not in my opinion be considered in computing the value of the second relief sought.

1882
March 10.

APPELLATE CIVIL.

Before Mr. Justice Straight and Mr. Justice Brodhurst.

SIRDAR KUAR AND ANOTHER (PLAINTIFFS) v. CHANDRAWATI AND ANOTHER
(DEFENDANTS).*

*Accounts stated—Bond given for balance—Bond impounded as insufficiently stamped
—Suit on accounts stated—Contract, substitution of new.*

Where accounts between a creditor and his debtor were stated, and the latter gave the former a bond for the balance found due by him to the creditor, held

*Second Appeal, No. 925 of 1881, from a decree of W. Kaye, Esq., Commissioner of Jhansi, dated the 19th May, 1881, affirming a decree of J. MacLean, Esq., Assistant Commissioner of Jhansi, dated the 3rd March, 1881.

that the creditor was precluded from subsequently suing on the accounts stated for the balance which had been found due.

THIS was a suit for Rs. 789-8-6 due on accounts stated. It appeared that accounts between one Ram Chand, represented by the plaintiffs in this suit, and the defendants in this suit had been stated in May, 1878, and a sum of Rs. 1,187-13-0 was found to be due by the defendants to Ram Chand. The defendants gave Ram Chand a bond for the amount so found due payable by instalments, in which they hypothecated certain immoveable property as collateral security. This bond was subsequently impounded by the revenue authorities by reason of its being insufficiently stamped. The defendants paid three of the instalments payable thereunder. In January, 1881, the heirs of Ram Chand, abandoning the bond, instituted the present suit against the defendants for the balance of the debt, basing their claim on the accounts stated. Both the lower Courts held that the suit would not lie, as by the execution of the bond the debt due on the accounts stated had come to an end, and a new debt under the bond had been created.

In second appeal by the plaintiffs to the High Court it was contended on their behalf that the amount claimed being due to them by the defendants they were equitably entitled to a decree, the form of the suit notwithstanding.

Munshi *Sukh Ram*, for the appellants.

Babu *Ratan Chand*, for the respondents.

The judgment of the Court (STRAIGHT, J. and BRODHURST, J.) was delivered by

STRAIGHT, J.—Much though we might have wished to be able to hold that the bond entered into between the parties did not preclude the plaintiff-appellant from recovering on his account stated, we find ourselves unable to do so. It is obvious that, when the adjustment of accounts took place and the bond was made, it was intended to consolidate and secure the debt due from the defendant to the appellant, and was the new contract to subsist between the parties in supersession of the former one. We are reluctantly compelled to hold that the lower Courts have rightly decided and that this appeal must be dismissed with costs.

Appeal dismissed.

1882

SIRDAR KUMAR
v.
CHANDRA-
WATI.