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v.  
DARYAI  
SINGE.

were passed long before the Specific Relief Act came into operation, and as upon careful consideration the case now referred appears to me to be one exactly of the kind mentioned in s. 39 of that Act, and to be in the nature of a simple declaratory suit, I think it desirable to take the opinion of the Full Bench upon the point.

The Full Bench delivered the following opinion :—

STUART, C. J., and STRAIGHT, OLDFIELD, BRODHURST, and TYRRELL, J.J.—We concur in the opinion expressed in this reference, that the case is in the nature of a simple declaratory suit.

## APPELLATE CIVIL.

*Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Tyrrell.*

KUBAIR SINGH (PLAINTIFF) v. ATMA RAM (DEFENDANT)\*

*Mortgage—Suit for redemption—Valuation of suit—Jurisdiction.*

The purchaser of the equity of redemption of certain land sued to redeem the same. He made the mortgagor and vendor of the land a "pro forma" defendant. *Held* that the value of the subject-matter of the suit was not the market-value of the land, but the amount of the mortgage-money.

THE plaintiff in this suit, who had purchased the equity of redemption of a five biswas share of a certain village for Rs. 1,500, claimed to redeem the mortgage of the share on payment of Rs. 240, the mortgage-money. He joined as a defendant, *pro forma*, the mortgagor and vendor of the share in suit. The suit was instituted, regard being had to the amount of the mortgage-money, in the Munsif's Court. The defendant mortgagee set up as a defence to the suit that the value of the share being Rs. 1,500, the suit was not cognizable in the Munsif's Court. The Munsif held that the suit should be valued, for the purposes of jurisdiction, at the alleged value of the mortgage, that is to say, Rs. 240, and not at the value of the property, and that the suit was therefore within his cognizance; and in the result gave the plaintiff a decree. On appeal by the defendant the lower appellate Court held that the suit was not cognizable by the Munsif, inasmuch as it should be valued at the value of the mortgaged property, not being one merely between a

\* Second Appeal No. 826 of 1882, from a decree of Mirza Abid Ali Beg, Subordinate Judge of Mainpuri, dated the 5th July, 1882, reversing a decree of Maulvi Abdul Haq, Munsif of Fyapund, dated the 20th February, 1882.

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mortgagor and mortgagee, and it set aside the decree of the Munsif, and directed that the plaint should be returned to the plaintiff in order that it might be presented to the proper Court.

In second appeal the plaintiff contended that the suit should be valued at the mortgage-money, and it had therefore been properly instituted in the Munsif's Court.

The *Senior Government Pleader* (Lala Juala Prasad and Pandit Bishambhar Nath, for the appellant.

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

The Court (STUART, C. J. and TYRRELL, J.) delivered the following

JUDGMENT.—This appeal must be allowed. The Court of first instance took a proper view of the value of the subject-matter in dispute; and the lower appellate Court was wrong in reversing the decree on that question only.

We set aside the decree of the lower appellate Court, and finding no force in the other pleas urged before the Subordinate Judge, we restore the decree of the Court of first instance and decree this appeal with costs.

*Appeal allowed.*

### FULL BENCH.

*Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Oldfield, Mr. Justice Brodhurst and Mr. Justice Tyrrell.*

DAYA NAND (APPELLANT) v. BAKHTAWAR SINGH (RESPONDENT).

*Order refusing to file in Court agreement to refer to arbitration—Appeal—Court-fee—Civil Procedure Code, ss. 2, 523—“Decree”*

*Held* by the Full Bench (OLDFIELD, J., dissenting) that an order refusing to file in Court an agreement to refer to arbitration is not appealable.

*Per* OLDFIELD, J., that such an order is appealable, and the court-fee payable on the memorandum of appeal is an *ad valorem* fee computed on the value of the subject-matter in dispute in the appeal.

*Janki Tewari v. Gayan Tewari* (1) distinguished by STUART, C. J., and followed by OLDFIELD, J.

ONE Daya Nand applied under s. 523 of the Civil Procedure Code to have an agreement to refer to arbitration filed in Court.

(1) I. L. R., 3 All., 427.

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KUBAIR  
SINGH

ATMA RAM.

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