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malice. I am not, therefore, prepared to interfere with his finding.

It has been suggested that the Magistrate had no jurisdiction to try this case. This point was not raised in the court of the Magistrate. It was taken in the grounds of appeal before the learned Sessions Judge but was not pressed. The learned Sessions Judge, in his judgment, says that the plea taken in paragraph 22(h), i.e., the question of jurisdiction, of the application has not been argued before him. In the grounds of revision before this Court this point is not raised. There is no material on the record before me to hold that the Magistrate had no jurisdiction to try this case. The complaint, as pointed out above, was instituted in the court of the City Magistrate who transferred it to the court of Mr. Mason. I am of opinion that he must have had the power or orders from the District Magistrate to transfer cases. Anyhow, at this late stage I am not prepared to set aside the order of the learned Magistrate as passed without jurisdiction when there is no material on the record. I, accordingly, reject this application.

*Thomas, J.*

*Application rejected.*

## REVISIONAL CIVIL

*Before Mr. Justice Ziaul Hasan and Mr. Justice H. G. Smith*

1934  
August, 3

PIRTHWI NATH BHARGAVA (OBJECTOR-APPLICANT) *v.* IN  
THE MATTER OF THE ESTATE OF LATE R. B. TRILOK NATH  
BHARGAVA (OPPOSITE PARTY)\*

*Court Fees Act (VII of 1870), Schedule I, Art. 12—Succession certificate—Court fee payable on an application for succession certificate.*

According to Article 12 of the First Schedule of the Court Fees Act, as it now stands, the amount payable in respect of an application for succession certificate should be calculated according to the amounts of the individual items comprised in the

\*Section 115 Application No. 42 of 1933, against the order of Babu Mahabir Prasad Verma, Subordinate Judge of Lucknow, dated the 10th of April, 1933.

application and not according to the total amount of those items. It is impossible to interpret the words "the amount or value of any debt or security" in that article as referring to anything except individual debts and individual securities.

Messrs. *Radha Krishna Sivastava* and *Shiam Manohar*, for the applicant.

The Government Advocate (Mr. *H. S. Gupta*), for the opposite party.

ZIAUL HASAN and SMITH, JJ.:—This is an application under section 115 of the Code of Civil Procedure against an order, dated the 10th of April, 1933, of the learned Subordinate Judge of Lucknow.

The matter relates to an application for a succession certificate which was made by one B. Prithvi Nath Bhargava in respect of the estate of his deceased father Rai Bahadur Trilok Nath Bhargava. The amount specified in the application came to a total of Rs.1,53,001-7, the amounts in question all being due under insurance policies. The Court-fee paid by the applicant was Rs.3,364-4. The office reported that the amount properly payable was Rs.4,774 and that therefore there was a deficiency of Rs.1,409-12. It appears that the amount paid by the applicant was calculated with reference to the individual items, seven in number, comprised in the application, whereas the office took the view that the court fee ought to have been calculated upon the total amount. After hearing what the parties had to say, the learned Subordinate Judge on the 16th of July, 1932, recorded an order saying that he agreed with the counsel for the applicant. Later on, on the 27th of October, 1932, the Chief Inspector of Stamps reported that there was a deficiency of Rs.1,405-13. He substantially took the same view as the office had taken though there was a small arithmetical difference between the sum that he arrived at and the sum that was arrived at by the office. Having considered that report, and heard the counsel for the applicant, the learned Subordinate Judge on the 10th of April, 1933, passed an

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order that the deficiency reported by the Chief Inspector of Stamps should be realized from the applicant. The latter has now made an application to this Court in revision against that order.

We have heard arguments at some length on both sides. For the applicant, it is urged that by his order of the 16th of July, 1932, to which we have made reference above, the learned Subordinate Judge became *functus officio*, and that in passing his subsequent order of the 10th of April, 1933, he acted "*ultra vires*." It is further contended that in any case he was not entitled after the grant of the certificate to call upon the applicant to pay any additional court fee. Lastly, it is contended on the merits that according to article 12 of the first Schedule of the Court Fees Act, as it now stands, the amount payable in respect of the application was rightly calculated by the applicant according to the amounts of the individual items comprised in the application, and not according to the total amount of those items.

We do not think it necessary to consider whether the learned Subordinate Judge had power to pass any further order in the matter after his order of the 16th of July, 1932, for we are satisfied that the phraseology of article 12 of the first Schedule admits only of one construction, and that is the construction that is contended for on behalf of the applicant. If it was intended that the amount payable in respect of an application for a certificate under the Indian Succession Act should be calculated on the total amount of the debts or securities specified in the application, that intention, in our opinion, should and could have been made clear in the phraseology of the article. The article, however, makes reference to "the amount or value of any debt or security" and we think that it is impossible to interpret these words as referring to anything except individual debts and individual securities. This view is confirmed

by the phraseology of the note which appears at the foot of the article in question.

We are therefore of opinion that the order of the learned Subordinate Judge calling upon B. Prithvi Nath Bhargava to pay an additional sum of Rs.1,405-13 was wrong, and it is not necessary for us, for the purpose of disposing of this application, to consider any of the other contentions raised on behalf of the applicant. We are of opinion that nothing further was due from the applicant, and we accordingly allow this application, and set aside the order of the Court below, with costs in favour of the applicant in both courts.

*Application allowed.*

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Ziaul Hasan  
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JJ.

## REVISIONAL CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava, Acting Chief Judge and Mr. Justice G. H. Thomas*

BABU HAR DAYAL VAKIL (DEFENDANT-APPLICANT) v. BABU RAGHUBAR DAYAL (PLAINTIFF-OPPOSITE PARTY)\*

1934  
August, 9

*Civil Procedure Code (Act V of 1908), section 95 and order XXXVIII, rule 5—Attachment before judgment—Application for attachment before judgment unjustified and based on insufficient grounds—Compensation for wrongful attachment, opposite party whether entitled to—Provincial Small Cause Courts Act (IX of 1887), section 25—Small Cause Court finding that the case is not cognizable by it and returning plaint for presentation to proper court, whether amounts to decision of case by it—Revision—High Court's power to entertain revision and award compensation under section 95.*

Where an application for attachment before judgment under order 38, rule 5, C. P. C., is altogether unjustified and based on altogether insufficient grounds, the opposite party is entitled to reasonable compensation.

Where a Small Cause Court does not decide a suit on merits but arrives at a finding that the suit is not cognizable by it and directs the plaint to be returned for presentation to the proper court the case must be deemed to have been decided so far as the

\*Section 25 Application No. 17 of 1933, against the order of Babu Harcharan Dayal, Subordinate Judge (as Judge of Small Cause Court), Bahraich, dated the 5th of November, 1932.