

defendant personally. It was by concealment of this fact that the decree-holder obtained the decree, and we are not disposed to assist him in the execution thereof. If there is any property of the lunatic in the hands of his managers and guardians, he can proceed against that, but we think that the lunacy of the judgment-debtor is good cause within the meaning of the Code for disallowing an application for his arrest. Authorities have been cited to us showing that, under the old English law, a lunatic could be arrested. These are to be found collected in Phillips on Lunatics, page 37, but we do not think that they apply to this case which has to be decided under the provisions of the Code of Civil Procedure. We dismiss the appeal with costs.

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Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

SHET KAVASJI MANCHERJI (ORIGINAL DEFENDANT), APPELLANT, v.
DINSHAJI MANCHERJI (ORIGINAL PLAINTIFF), RESPONDENT.*

1897.

October 4.

Jurisdiction—Appeal—Administration suit—Suit filed in Second Class Subordinate Judge's Court—Decree in such a suit—Appeal from such decree to District Court—Practice—Procedure—Bombay Civil Courts Act (XIV of 1869).

The plaintiff filed an administration suit in the Court of a Subordinate Judge of the Second Class, valuing the relief claimed at Rs. 130. The Subordinate Judge found that the property in suit was worth over a lakh of rupees, that the liabilities came to Rs. 5,729, and that the defendant was indebted to the estate in the sum of Rs. 15,199. He drew up a preliminary decree, directing (*inter alia*) that the defendant should pay this amount into Court within two weeks. Against this order the defendant appealed to the District Court. The District Judge returned the appeal for presentation to the High Court, on the ground that the subject-matter exceeded Rs. 5,000.

Held, reversing the order of the District Judge, that the appeal lay to the District Court.

APPEAL from the decision of T. D. Fry, Acting District Judge of Ahmedabad.

The plaintiff filed this suit for the administration of the estate of his deceased father Mancherji and for the recovery of his share of the property.

* Appeal, No. 31 of 1897 from order.

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Plaintiff valued his claim at Rs. 130, and expressed his willingness to pay the court-fee on any larger amount that might be awarded to him.

The suit was filed in the Court of the Joint Subordinate Judge of the Second Class at Ahmedabad.

The Subordinate Judge, after referring the case to two Commissioners for taking accounts, found that the estate of the deceased Mancherji consisted of properties worth over a lakh of rupees, that the liabilities amounted to Rs. 5,729, and that the defendant was indebted to the estate in the sum of Rs. 15,199.

The Subordinate Judge thereupon passed an interlocutory order, directing the defendant to pay into Court the said sum of Rs. 15,199 within two weeks.

Against this order defendant appealed to the District Court.

The Acting District Judge returned the appeal for presentation to the High Court, holding that the subject-matter exceeded Rs. 5,000.

The defendant appealed from this order to the High Court.

C. H. Setalvad, for appellant.

Wadia, with *Lalubhai A. Shah*, for respondent.

PARSONS, J. :—The suit out of which the present appeal arises, was brought for the administration of the estate of the deceased Mancherji and for the recovery of the share of the residue of the property of the said Mancherji to which the plaintiff might be found entitled. The plaintiff valued the relief claimed at Rs. 130, expressing his willingness to pay court-fees on any larger amount that might be awarded to him. The suit was filed in the Court of a Subordinate Judge, Second Class, the value of the claim being within his jurisdiction.

The Subordinate Judge on the 22nd March last recorded findings that the estate of Mancherji consisted of certain properties (the value of which admittedly is over a lakh of rupees), that the liabilities came to Rs. 5,729, and that there was due to the estate by the defendant No. 1 a sum of Rs. 15,199, and he drew up a kind of preliminary decree, one of the orders in which was that the defendant should pay this amount into Court within two weeks.

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The defendant appealed against the decree to the District Court. The Judge of that Court passed the following order :—“I return this appeal for presentation to the High Court, holding that the subject-matter exceeds Rs. 5,000.”

• The defendant has now appealed against this order, and he has also presented an appeal from the decree to this Court, and we have either in our appellate or revisional jurisdiction to determine whether the appeal lies to the District Court or to the High Court. We have no doubt that it lies to the District Court. Section 8 of the Bombay Civil Courts Act, 1869, enacts that “except as provided in sections 16, 17 and 26, the District Court shall be the Court of appeal from all decrees and orders passed by the Subordinate Courts from which an appeal lies under any law for the time being in force.” Sections 16 and 17 refer to Assistant Judges. Section 26 provides that “In all suits decided by a Subordinate Judge of the First Class in the exercise of his ordinary and special original jurisdiction of which the amount or value of the subject-matter exceeds five thousand rupees, the appeal from his decision shall be direct to the High Court.” The present is not a suit decided by a Subordinate Judge of the First Class. It is decided by a Subordinate Judge of the Second Class. The District Court is, therefore, the Court of appeal from a decree or order passed in it.

The principle of the ruling in *Ibrahimji v. Bejanji*⁽¹⁾ has apparently been accepted by another Division Bench of this Court: see *Gangadhar v. Vinayak*⁽²⁾. I have some doubt of its correctness, and would point out what seems to me an anomaly, *viz.*, that though a plaintiff is allowed to place any value he pleases on his claim in order to select the forum in which he may file his suit, the permission does not extend beyond decree, the forum of appeal being governed not by that value but by the value decreed. No difficulty arises when the suit is filed in the Court of a Subordinate Judge of the First Class, and he passes a decree for a sum exceeding Rs. 5,000, but a difficulty may arise when in a suit valued at above Rs. 5,000 he passes a decree for a less sum, and when, as here, the suit is filed in the Court of a Subordinate

(1) I. L. R., 20 Bom., 265.

(2) P. J., 1896, p. 417.

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Judge of the Second Class, whose jurisdiction is limited to claims not exceeding Rs. 5,000 in value, the question will be sure to arise whether he can pass any decree or order for a sum exceeding that amount. We have not, however, now to deal with these questions.

We reverse the order of the District Judge returning the appeal, and direct him to admit it and dispose of it according to law. We make all costs in this appeal costs in the cause.

. RANADE, J.:—In this case the respondent's counsel raised a preliminary objection that the order passed by the District Judge was not a decree, and no appeal lay therefrom. The rulings he cited no doubt support this contention—*Mahabir Singh v. Behari Lal*⁽¹⁾; *Bindeshri Chaubey v. Nandu*⁽²⁾. Appellant's pleader did not much contest this point, and in fact asked this Court to interfere in its extraordinary jurisdiction. We think this is a fit case for the exercise of that jurisdiction.

The District Judge has returned the appeal filed before him on the ground that he had no jurisdiction to entertain it, as the value of the subject-matter exceeded Rs. 5,000. This value, however, has not been determined yet finally by the Subordinate Judge. He has only passed what is virtually a preliminary order, and the value of Ardesir's share has yet to be determined. As the original suit was valued at Rs. 130, and was tried by a Subordinate Judge of the Second Class, no appeal lies to this Court. Section 26 of Act XIV of 1869 is quite clear upon this point. We understand that the District Judge had heard other appeals from previous orders passed in this case, and that his orders were confirmed on second appeal.

We must reverse the order of the District Judge, and direct him to admit the appeal on his file, and dispose of it according to law.

Order reversed.

(1) I. L. R., 13 All., 320.

(2) I. L. R., 3 All., 456.