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enables the Court, if it shall appeear to it "that the injunction was applied for "on insufficient ground, or if the claim of the plaintiff is dismissed, or judg- "ment is given against him by default or otherwise, and it shall appear that "there was no probable ground for instituting the suit, to award, on the appli- "cation of the defendant, such sum not exceeding 1,000 rupees, as it may deem "a reasonable compensation to the defendant, for the expense or injury occa- "sioned to him by the issue of the injunction;" and the section concludes in these words,—"an award of compensation under this section shall bar any suit for damages in respect of the issue of the injunction." It does not appear on this reference on what ground the Moonsiff in the first suit refused compensation. It does not appear even that compensation was applied for by the defendant, although he did appeal against the order refusing it. I think that as that section provides expressly that only an award of compensation shall debar any suit for damages, it follows that an unsuccessful application by the defendant will not debar him from instituting a suit for the purpose of obtaining such compensation. Whether that suit will lie in the Court of Small Causes is not the question before us.

Upon the second question referred to us, I should have been inclined to think, if the parties had not agreed to the contrary, that clause 2, section 1 of the Limitation Act will not govern the case; but as that question is not referred to us, it is unnecssary to decide it. But as to the time at which the cause of action accrued, it appears to me that both the plaintiff and the defendant are mistaken in their contention. It seems to me that the time of the accrual of the cause of action in this case was the time at which the plaintiff was damaged by the wrongful injunction obtained by the defendant, and that the cause of action continued as long as the injunction remained in force. As soon as the injunction was at an end, limitation would begin to run. It seems to me, therefore, that neither the decision of the Moonsiff nor that of the Appellate Court was the commencement of the plaintiff's cause of action. I think the papers should be returned to the Court of Small Causes with these observations.

Before Mr. Justice L. S. Jackson and Mr. Justice Glover.

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UMA SANKAR ROY CHOWDHRY (PLAINTIFF) *v.* SYUD MANSUR ALI KHAN BAHADUR, NAWAB NAZIM OF BENGAL (DEFENDANT).*

Valuation of Suit—Act XXVI of 1867, *Schedule B, Article* 11, *Note A—Act XVI of* 1868, *s.* 16.

On a dispute arising as to the proper valuation of a suit, the Court may, on the application of either party, issue a commission, and make an enquiry into the market value, or the net profits of the property in dispute. The final decision as to the proper valuation is vested in the Court which hears the suit.

When the defendant asserts that a suit is over-valued, the *onus* of proving the truth of his assertion lies on him.

* Special Appeal, No. 2700 of 1869, from a decree of the Officiating Judge of Moorshedabad, dated the 17th August 1869, reversing the decree of the Subordinate Judge of that district, dated the 31st March 1869.

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UMA SANKAR ROY CHOWDHRY v. SYUD MANSUR ALI KHAN BAHADUR.

Baboo *Srinath Das* for appellant.

Baboo *Anukul Chandra Mookerjee* for respondent.

JACKSON, J.—The plaintiff in this case sued to recover possession of some land, part of which was occupied as a garden, and he valued his suit at rupees 2,000, estimating it at twenty times the annaul net profits. The defendant objected that the suit was very much over-valued, inasmuch as the plaintiff according to his own showing, had purchased the land in dispute for rupees 671.

The Subordinate Judge was of opinion that the defendant's objection on this score was not made out, and therefore he over-ruled that objection; and going into the merits of the case, gave judgment for the paintiff.

On appeal to the Zilla Judge, this question of valuation was again raised, and the Judge holds that ground of appeal to be a valid one. His words are these:—"The plaintiff in his plaint states that he purchased the "land in dispute for rupees 671, and his first witness states that this was "a proper price for the land. Consequently, this sum represents the market "value of the land, and, according to section 6, Act VIII of 1859, the suit "should have been instituted in the Court of the lowest grade competent to "try it, which, according to Act XVI of 1868, was the Court of the Moon- "siff. I think it is clear that the alternative valuation of twenty times the net "profits allowed by Note A, Article 11 of Schedule B., Act XXVI of 1867, "can only be allowed when there is no proof as to the market value,"

Now this is not a very accurate statement of the law by the Zilla Judge. According to the law in force, before the passing of Act XVI of 1868, the Moonsiff had jurisdiction to try a suit, of which the value did not exceed rupees 300, and the Sudder Ameen had jurisdiction in suits of which the value did not exceed rupees 1,000. The Principal Sudder Ameen had jurisdiction without limit as to value. That being the case, it was necessary to provide, for the convenience of the Courts, as was provided by section 6, Act VIII of 1859, that suits should ordinarily be tried in the Courts of the lowest grade which had jurisdiction to try them, that is, in order that the Principal Sudder Ameen's Court, although it had jurisdiction to try suits below rupees 1,000, should not be flooded with suits of that description. But the law was altered by Act XVI of 1868, and by that Act, the Subordinate Judge, unless he were invested (under section 16) with the powers of a Moonsiff, had jurisdiction to try suits below rupees 1,000 only on reference by the Zilla Judge. Consequently, if the valuation of this suit appeared to be not more than rupees 1,000, the Subordinate Judge could not have had jurisdiction to try it, unless it had been referred to him by the Zilla Judge. The stamp law in force, when this suit was commenced, directs (Schedule B, Article 11, Note A, annexed to Act XXVI of 1867) that, "in suits for immoveable property, the amount of stamp duty "payable shall be computed according to the market value of the property in "suit. In suits for immoveable property paying revenue to Government, where "the settlement is temporary, eight times the revenue so payable, and where

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"the settlement is permanent ten times the revenue so payable, and in suits for "immoveable property not paying revenue to Government, twenty times "the annual net profits of such property shall be taken to be the market "value thereof, unless and until the contrary shall be proved." Then, in a further note under the same article, these words follow: "In order to ascertain "the market value, or the annual net profits of any such property as is "described in Note A, the Court may, either of its own motion, or on the appli-"cation of any party to the suit, issue a commission to any proper person "directing him to make such local or other investigation as may be neces-sary, and to report thereon to the Court, and the decision of the Court as "to the market value or annual net profits shall be final."

No doubt, the primary object of the Legislature in framing these provisions was to protect the stamp revenue of the State; but, of course, it was not to be allowed that parties, vexatiously and for the purpose of harassing their opponents, should allege an unreasonably high value of the property in dispute, and, therefore, it was made competent to the Court, on the application of either party, to issue a commission and make an enquiry into the market value, or the net profits of the property in dispute; and it was provided that the decision of the Court on that question should be final. It appears to me consequently that, if any question on the valuation of the property in dispute is raised by either of the parties, the final decision upon that point is vested in the Court which hears the suit.

But whether that be so or not, it appears to me that the Judge had no sufficient grounds for the decision which he came to, reversing the judgment of the Subordinate Judge on this point. The plaint, no doubt, recited that the subject of dispute had been purchased by the plaintiff for rupees 671, and the witness, no doubt, stated that the plaintiff, had purchased the property at a fair price; but that must refer to the price at which the plaintiff purchased in the year 1274 (1867), or one year before the commencement of the suit. It by no means follows that the price of the property might not have risen in the interval so as to bring it up to, or nearly up to the value put upon it by the plaintiff. If the defendant desired to question the value of the property at the time of bringing the suit, it was his business, either to adduce evidence as to what that value was, or to move the Court to cause a local enquiry to be held. I think that the Principal Sudder Ameen came to a very reasonable conclusion upon the question, and that his judgment ought not to have been disturbed by the Judge, even if he had jurisdiction to disturb it. I think, therefore, that the decision of the lower Appellate Court must be set aside, and the case must be remanded to it, in order to a re-consideration upon the merits. The plaintiff will be entitled to the costs of this appeal.

GLOVER, J.—I also think that the case should be remanded, on the ground that the *onus* of showing that the suit was over-valued was on the defendant and that the defendant altogether failed to discharge that *onus*.