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the following circumstances :—the suit was instituted in the Court of the Moonsiff of Lashkerpore for some land valued (for the purpose of the stamp duty) at Rs. 82-1-4.

A preliminary objection was raised before the Moonsiff that the claim had been undervalued, and that the plaint, if properly valued, should have been filed before the Subordinate Judge of the district. The Moonsiff inquired into the question of valuation, and came to the decision that the claim was undervalued; and that, had it been properly valued, he could have no jurisdiction to try the suit; and he accordingly returned the plaint to the plaintiff. The plaintiff appealed to the Subordinate Judge, who came to a different conclusion upon the evidence, and thinking that the Moonsiff had jurisdiction, reversed the decision of the Moonsiff, and directed him to try the case.

A special appeal was then preferred by the defendant, and the point was raised that the Moonsiff's orders on the subject of valuation were final under the note attached to Article 11, Schedule B., Act XXVI of 1867, and that his decision on the question of jurisdiction was consequently final also. In support of this view, the defendant's pleaders cited *Uma Sankar Roy Chowdhry v. Syed Mansur Ali Khan Bahadur* (1) *Madhusudan Chuckerbutty v. Rymani Dasi* (2), *Mafizuddin, alias Arshad* such investigation the Court finds that (2) *Defore Mr. Justice Loch and Mr. Justice Hobhouse.*

The 29th April 1870.

if the estimation has been excessive, may in its discretion, refund the excess paid as such fee; but if the estimation has been insufficient, the Court shall require the plaintiff to pay so much additional fee as would have been payable had the said market value or net profits been rightly estimated. In such case the suit shall be stayed until the additional fee is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed."

MADHUSUDAN CHUCKERBUTTY
 (PLAINTIFF) v. RYMANI DAS AND
 ANOTHER (TWO OF THE DEFENDANTS).*

Baboo Durga Das Dutt for the appellant.

Baboo Bansi Dhar Sein for the Respondents.

The facts are fully stated in the judgment of the Court which was delivered by.

HOBHOUSE, J.—We think that the Judge was right in this instance. The plaintiff sued, averring that the value of

(1) 5 B. L. R., App., 6,

* Special Appeal, No. 2665 of 1869, from a decree of the Judge of West Burdwas, dated the 16th August 1869, affirming a decree of the Moonsiff of that district, dated the 14th June 1869.

Ali Chowdhry v. Karimunissa Bibi (1), and *Ishan Chandra Mookerjee v. Lokenath Roy* (2). The last case was decided by

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his suit was represented by a certain sum. The judge of the first Court directed the plaintiff, the valuation of the property being disputed by the defendant, to deposit the necessary fees for the enquiry provided for by the note to article 11, clause 3, note (b), Schedule B., Act XXVI of 1867. The plaintiff refused to deposit the fees in question, and elected rather to rely on certain witnesses whom he adduced to prove the valuation in question. The Court found that even upon the evidence of those witnesses the plaintiff had undervalued his suit, and therefore rejected the plaint. The plaintiff appealed to the Judge, and the Judge held that the order of the Court below was final, and rejected the appeal.

We think the Judge was right. The Law says that in order to ascertain the market value or the annual net profits of any "property" in suit, the Court "may either of its own motion or on the application of any party to the suit issue a commission to any person, directing him to make such local or other investigation as may be necessary, 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." We do not understand that the Legislature there intended to restrict the Court in the matter of such investigation so that it could only take the Ameen's report in such matter, but evidently the Legislature there intended to give the Court the benefit, if it so chose, of the result of an Ameen's investigation such as is provided for in other matters in the Code of Civil Procedure. But what the Legislature does in so many words say, is, that "the decision of the Court as to the market value or annual net profits shall be final." About these words and the meaning of them there cannot we think be any reasonable dispute.

Then the pleader for the special appellant states that there is no decision upon this point. This, however, is an error of fact. Because what the Court has done, and what indeed the special appellant complains of, is that the Court has found that his suit was under valued, and that under-valuation could only have reference either to the market value or to the matter of the annual net profits; because it is one or other of these facts which is the measure of the valuation at which any particular suit is to be assessed.

The pleader, however, refers us to certain sections of Act VIII of 1859, namely sections 31 and 36, which provide, that when the first Court has rejected a plaint for improper valuation, then an appeal shall lie from the order of that Court to the Court to which it is subordinate. No doubt those sections do so provide. But the section of the Act which is passed at a later period provides exactly the contrary, and of course by implication the section of the first Act is repealed by the provisions of the last Act.

We think the Judge is right, and we dismiss the appeal with costs.

I may add that in the decision of a cognate matter, in *Eshanchunder Chuckerbutty v. Soorjo Loll Gossain* (a) a Bench of three Judges of this Court held that whereas in this case the plaintiff had refused to obey the order of the Court on the matter of a Civil Ameen's proceeding and investigation, it was held that in reality he was in default, and his suit should have been, and was, properly dismissed for default and no appeal or special appeal lay against the order of the Court dismissing the plaintiff's suit and that his only remedy was by way of review.

(1) 6 B. L. R., App., 11.

(2) *Ib.*, 12.

(a) Sp. No. W. R., I.

1871 Mr. Justice E. Jackson and Mr. Justice Mookerjee, but on re-consideration they were inclined to doubt the correctness of their judgment.

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Their Lordships observed that it seemed to them that the proper construction to be placed upon the note to Schedule B of Act XXVI of 1867, is that when the case is admittedly one within the jurisdiction of the Court in which the suit is brought, the exact amount of stamp required may be determined by that Court, and its decision is final. This would appear from the last sentence in that note which directs that, if the valuations is found to be excessive, the excess shall be returned, and if deficient, the deficit shall be put in before the case proceeds any further. These directions would not apply when the decision of the Moonsiff was that the valuation took the case beyond his jurisdiction. That if this be the correct interpretation to be put upon this law, it will do away with the forced construction put upon this portion of the law in the decision in *Madhusudan Chuckerbutty v. Rymani Dasi* (1),—viz., that by its sections 31 and 36 of the Procedure Code are virtually repealed though there is no repealing enactment to that effect, and there will be an end also of the other difficulty which must follow if the former view of the law is correct,—viz., that, when the Moonsiff and Subordinate Judge take different views of the valuation of a suit, as in this case, the decision of each, as to the institution of the suit in his Court, is final, and the plaintiff has no remedy.

The learned Judges being asked to refer the question to a Full Bench, considered that that would be the proper course to adopt, and accordingly referred the case.

Baboo *Annada Prasad Banerjee*, for the appellant, contended that the question of jurisdiction rests entirely upon the question of the stamp to be paid on the plaint, because it is the valuation of the suit that determines which Court is competent to try the suit. And as the Moonsiff's decision on the question of stamp is final under note *b*, Schedule B to Act XXVI of 1867, it is final also as to jurisdiction. He relied upon the cases before cited.

Baboo *Durgamohan Das* for the respondents was not called upon.

(1) *Ante*, p. 664.

The opinion of the Full Bench was delivered by

NORMAN, J.—In this case Udaya Chand Dutt, the plaintiff, brought a suit in the Court of the Moonsiff of Lashkarpore, in the district of Sylhet, for some lands, valuing his rights at Rs. 82-1-4.

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A preliminary objection was raised by the Collector of Sylhet on the part of Government, the defendant in the suit, to the effect that the Moonsiff had no jurisdiction, the property having been undervalued. The Moonsiff made a local enquiry, and finding the value of the property in suit to be Rs. 2,250, which was beyond his jurisdiction, returned the plaint to the plaintiff, in order that it might be filed in the Subordinate Judge's Court on a stamp of Rs. 2,250. The plaintiff appealed to the Subordinate Judge against the order of the Moonsiff rejecting the plaint, on the ground that the value of the claim, the subject-matter of the suit, was beyond his jurisdiction, under the provisions of the 36th section of the Code of Civil Procedure, Act VIII of 1859. The Subordinate Judge entertained the appeal, and tried the question of the valuation of the property. He found that the value of the claim was Rs. 500, and accordingly reversed the order of the Moonsiff which rejected the plaint. He directed the Moonsiff to receive the plaint upon a valuation of Rs. 500, and to try the case upon the merits.

From that decision a special appeal was presented to this Court, and the objection taken was that no appeal lay from the decision of the Moonsiff as to the market value of the property in suit. The appellant relied on a note to Article 11 of Schedule B, Act XXVI of 1867, which provides that (*reads.*) The case came before a Division Bench of this Court, Justices E. Jackson and Mookerjee, who, finding that there had been two decisions to the effect that in such cases no appeal lies from the determination of the first Court as to the value,—one of them being the case of *Madhusudan Chuckerbutty v. Rymani Dasi* (1), and the other of *Ishan Chandra Mookerjee v. Lokenath Roy* (2), referred this case for the opinion of a Full Bench.

(1) *Ante* p. 664.

(2) 6 B. L. R. App., 12.

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We are of opinion that, whenever a plaint is rejected under the provisions of section 30 of Act VIII of 1859, on the ground that the amount or estimated value of the claim, as stated by the plaintiff, is beyond the jurisdiction of the Court, an appeal is given by section 36 from the order rejecting the plaint. We think it clear that the provisions in the note to the Stamp Act XXVI of 1867, which was passed for a totally different purpose, namely, to prevent appeals upon questions of stamp duty where the sole question is as to the amount of stamp to be impressed on the plaint, cannot have the effect of repealing by implication the provisions of the Code of Civil Procedure, which in clear and distinct terms give a right of appeal where a plaint is rejected upon the ground that it is undervalued. We think it clear that, whenever for the purpose of determining the question whether or not the lower Court was right in rejecting the plaint upon the ground that it had no jurisdiction to entertain the suit, it becomes necessary to try what is really and truly the value of the property in suit, the Court which has to determine the appeal upon the question of jurisdiction has incidentally power to determine all those questions of fact which are necessary to enable it to arrive at a satisfactory determination on the question of jurisdiction. We think therefore that there is no doubt that an appeal to the Subordinate Judge lay in the present case, and for the purpose of determining that appeal, the Subordinate Judge had the power to enquire into and determine the question of the value of the property in suit. Were it otherwise, the greatest possible inconvenience would result. If a plaint had been presented to the Moonsiff, and the Moonsiff had tried the question as to the value of the property, and had decided that he had no jurisdiction, he would of course dismiss the suit. Suppose then the plaintiff being unable to appeal, to have presented his plaint to the Court of the Subordinate Judge, and the defendant had there objected that the valuation was not such as to give the Subordinate Judge jurisdiction. It is easy to imagine cases in which that course would be open to a defendant, notwithstanding an objection made by him to the valuation in the lower Court. If the objection on the part of the special appellant is well founded, it would

become the duty of the Subordinate Judge to take up and try the question of valuation and his decision also would be final, and therefore there would be a final decision that the suit could not be maintained in the Moonsiff's Court, and also a decision equally final that the suit could not be maintained in the Subordinate Judge's Court, which would lead to a practical absurdity and the greatest inconvenience.

The result of this decision is that the appeal will be dismissed with costs; the respondent will be allowed full costs, both in this Court and before the Division Bench.

[APPELLATE CIVIL.]

Before Mr. Justice Bayley and Mr. Justice Ainslie.

MUSSAMAT SURAJ BANSI KUNWAR (ONE OF THE DEFENDANTS) v.
MAHIPAT SING (PLAINTIFF).*

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Suit by a Reversioner—Declaratory Decree—Cause of Action.

A. brought a suit against C. and D., alleging that he was an heir expectant upon the death of B., a Hindu widow in possession of an estate, and as such sought for a declaration of title, and to have a certain conveyance of this estate said to have been executed by C. in favor of D. set aside as affecting A.'s future interest, without charging any act of waste or injury to the property which might affect his rights as reversioner. *Held*, that A. had disclosed no cause of action against C. and D. see also 15 B. L. R. 78.

THE plaintiff in this case sued as heir to his uncle for a declaration of his title to, and to set aside a kobala of a certain share in an estate, said to have belonged to one Nando Lal, deceased, executed by one Champa Kunwari and others, dated 25th March 1867. The plaintiff alleged that his ancestor, one Sheoburn Sing, purchased the property in suit, on the 25th July 1828, *benami*, or in the name of, one Bitburn Sing, and had effected a mutation of name in his favor, but himself held possession of it; that after the death of Sheoburn Sing, his sons remained in possession; that Nando Lal, one of the sons, died,

* Special Appeal, No. 290 of 1871, from a decree of the Subordinate Judge of Bhagulpore, dated the 4th December 1870, reversing a decree of the Moonsiff of that district, dated the 18th May 1870.