Regular Appeal from a decision passed by the Subordinate Judge of Rajshahye, dated the 16th July 1872.

Bohuroonissa Bibee (Defendant), *Appellant,*

versus

Kureemoonissa Khatoon (Plaintiff), *Respondent.*

Baboo Kashee Kant Sen for Appellant.

No one for Respondent.

In a suit for a declaratory order to set aside a summary order under Act VIII. of 1859, s. 246 where plaintiff asked also for an order "confirming possession after declaration of title," it was HELD that consequential relief was sought, and the stamp-fee leviable was the *ad-valorem* fee prescribed by the Court Fees Act.

Note by the Deputy Registrar.—THE lower Court, in its order from which this appeal is preferred, states that the suit was to establish the plaintiff's right to certain property named in the plaint, and to have her possession confirmed; and that her claim was based on a deed of sale in lieu of dower (hibba-bil-ewuz) executed in her favor by her husband.

The *suit* was valued at Rs. 9,560, and the stamp-fee levied from the plaintiff in the lower Court was Rs. 450, instead of Rs. 455 provided by law.

In the grounds of appeal, however, the appellant endeavours to make out, for the purpose of the stamp-fee now leviable, that the suit ought to have been "for setting aside the lower Court's order under section 246 (Act VIII. of 1859) after declaration of title," which, it is asserted, "is tantamount to a suit for confirmation of possession after declaration of title;" and that, consequently, under the Court Fees Act, the fee leviable is Rs. 20, *viz.*, Rs. 10 for the portion of the claim in which it is sought to have the summary order set aside, and Rs. 10 for the portion in which a declaration of title is sought.

This amount (*viz.*, Rs. 20) has consequently been paid in as the fee leviable in this appeal. But the Court Fees Act (clause 3, article 17, Schedule II.) provides a stamp of Rs. 10 in suits for "a declaratory decree, *where no consequential relief is prayed.*"

In the suit in question consequential relief *was* apparently sought, as the plantiff did not simply ask for a declaratory order to set aside the summary order of the lower Court under section 246, but also for an order "confirming possession after declaration of title;" and hence she properly paid the *ad-valorem* fee which, it is presumed, is also leviable in this appeal, instead of that which has been paid in, *viz.*, Rs. 20.

Order.

Kemp, J.—We think that the view taken by the Deputy Registrar is correct. The petitioner is directed to pay the proper stamp.

The 14th December 1872.

Present:

The Hon ble F. B. Kemp and F. A. Glover, *Judges.*

Adoption—Landlord and Tenant—Limitation—Deduction.

Case No. of 687 of 1872.

Special Appeal from a decision passed by the Officiating Judge of Rajshahye, dated the 5th January 1872, affirming a decision of the Subordinate Judge of Beauleah, dated the 19th June 1871.

Huronath Roy Chowdhry (Defendant), *Appellant,*

versus

Golucknath Chowdhry (Plaintiff), *Respondent.*

Mr. J. T. Woodroffe and *Baboo Sreenath Doss* and *Mohinee Mohun Roy* for Appellant.

Baboos Romesh Chunder Mitter and *Doorga Mohun Doss* for Respondent.

In a suit for rent, where plaintiff sued as the adopted son of the deceased landlord, and defendant (who was the adopted son of the deceased tenant, and in possession) denied the relationship of landlord and tenant between the parties:

HELD that, as plaintiff's adoption had been declared by a competent Court the mere fact of an appeal to the Privy Council did not alter his position as the successor to the right of her who was landlord of the deceased tenant, and of defendant who succeeded to that tenant's rights; and that although plaintiff had not received rent for many years, and had endeavoured to eject the defendant, yet that did not get rid of the fact that he stood in the shoes of the deceased landlord, and was in that relation to the defendant;

HELD that the landlord in the circumstances of this case could not be allowed deduction, in respect of the plea of limitation, for the time he was suing the tenant as a trespasser, because he must have known of defendant's right to hold as a tenant; such deduction being only allowable where the landlord's action was *bonâ fide*.

Glover, J.—THE plaintiff in this case sued the defendant for the rent due on 26 mehals for the years 1271 to 1277 B. S.

The substantial defence was that there existed no relationship of landlord and tenant between the parties, and that no suit for rent would lie.

The Judge, confirming the order of the Subordinate Judge, gave the plaintiff a decree for three years rent, holding the rest of the claim to be barred by the law of limitation.

Against this decision, both parties appeal: the defendant on the general issue, the plaintiff, because he has only been allowed three years' rents instead of seven.

It appears that, as between Rajmoyee Chowdhrain, the adopting mother of the plaintiff, and Roop Moonjuree Chowdhrain, the adopting mother of the defendant, a solehnama was executed in Bhadur 1244 B. S., whereby the latter got possession of a certain portion of the estate, paying a fixed rent of sicca Rs. 165 per annum, and during Roop Moonjuree's lifetime, rent was admittedly paid to Rajmoyee Chowdhrain in accordance with the solehnama. Since Roop Moonjuree's death, the defendant, her son, has refused to comtinue the payments to the plaintiff, the son of Rajmoyee Chowdhrain, on the ground that the latter has not been legally adopted.

There have already been suits between the two: One, by the present defendant to set aside the plaintiff's adoption by Rajmoyee, in which he failed, and which is now before the Privy Council in appeal. The other, by the present plaintiff to eject defendant from the mehals, and to recover mesne-profits, was dismissed on the ground that, by the terms of the solehnama, the son of Roop Moonjuree was entitled to retain possession.

Mr. Woodroffe for the defendant, appellant, contends that there exists no relationship of landlord and tenant between his client and the plaintiff; that ever since Roop Moonjuree's death, the possession has been adverse, and no rent has been paid, and that the plaintiff, by his action in the regular suit for possession, as well as by the prayer of his plaint in this suit, has admitted that the defendant is not his tenant.

I think the argument untenable. There is no doubt that, during her lifetime, Rajmoyee was the landlord of Roop Moonjuree, and that the latter acknowledged her tenancy, and paid the rent reserved. The plaintiff has been pronounced by a competent Court to be the adopted son of Rajmoyee (meaning by that, adopted by her in conformity with the directions of her deceased husband), and as such, succeeds to the position occupied by his adopting mother. The mere fact of an appeal having been preferred to Her Majesty in Council does not in any way alter that position; and if his adopting mother was Roop Moonjuree's landlord, and consequently of the person who succeeded to Roop Moonjuree's rights, so would be the plaintiff after he had succeeded to Rajmoyee's rights. I think that so long as the decision declaring the plaintiff to be the son adopted by Rajmoyee stands, the plaintiff must be considered as the landlord of the defendant.

It is quite true that the plaintiff has not received rent for many years, and that he endeavoured by suits to eject the defendant from the mehals, and to get khas possession with mesne-profits; but this does not get rid of the fact that, up to the present moment, at all events, the plaintiff stands in the shoes of Rajmoyee Chowdhrain, and is as much the landlord of the defendant as Rajmoyee was of Roop Moonjuree; and if the landlord, then the relationship objected to exist, and no length of time would bar. It is not as if the defendant had held these lands adversely as of his own separate right. His claim to hold them without paying rent to the plaintiff depends on his being able to prove to the Privy Council that the plaintiff is not the representative of Rajmoyee, in which case he (defendant) would by inheritance succeed to the entire estate.

I think, therefore, that the special appeal of the defendant must be dismissed with costs.

In the cross-appeal of the plaintiff, Baboo Romesh Chunder Mitter argues that his client is entitled to the rent accruing within three years of the date of his cause of action; that his cause of action to recover rent from the defendant did not accrue till the decision of the High Court in the suit of 1868, declaring him bound by the solehnama, and that, therefore, he is entitled to all the claims.

On this point also, I agree with the Court below. A landlord may, under certain circumstances, be allowed a deduction, when limitation is pleaded for the time he was suing a tenant as a trespasser—Ishan Chunder Roy *vs.* Khajah Asanoollah (17 Weekly Reporter 79); but the landlord's action must in that case be *bonâ fide*, and he must have brought his suit for ejectment in the full belief that the defendants were trespassers. In this case when the position of the two adopted sons is considered, and the circumstances in which the one stood to the

other, it is impossible to believe that the plaintiff was not perfectly aware both of the existence and of the authenticity of the solehnama under which, the defendant, in right of his adopting mother Roop Moonjuree, held as a tenant. Looking to all the circumstances of the case, I have no doubt that he did perfectly know the position of the defendant, and that his object was, if possible, to destroy it.

The cross-appeal is dismissed with costs.

Kemp, J.—I concur in dismissing these two appeals.

The 15th December 1872.

Present:

The Hon'ble Sir Richard Couch, *Kt.*, *Chief Justice*, and the Hon'ble Charles Pontifex, *Judge.*

Jurisdiction—Mala-fide Claim—Small Cause Court, Calcutta—Act IX. of 1850, s. 28—Act XXVI. of 1864, s. 2.

Reference to the High Court under section 7 of Act XXVI. of 1864, by the First and Second Judges of the Calcutta Court of Small Causes.

Bonomally Nawn, *Plaintiff*,

versus

T. Campbell, *Defendant.*

Mr. Kennedy for Plaintiff.

Mr. Apcar for Defendant.

Having regard to the provisions of section 28, Act IX. of 1850, and section 2, Act XXVI. of 1864, the Small Cause Court at Calcutta has no jurisdiction in a case in which the plaintiff, in order to give jurisdiction to the Small Cause Court, claims as damages sums which by law he cannot recover, which he cannot be entitled to at all, and adds them to his claim for that purpose.

Reference.—THE question which arises in this case has reference to the Court's jurisdiction.

The provisions as to jurisdiction contained in Act IX. of 1850 (the original Small Cause Courts' Act) are not identical with those contained in Act XXVI. of 1864 (the Small Cause Court Extension Act).

By section 28, Act IX. of 1850, "all persons shall be deemed within the jurisdiction of the Court, who dwell or carry on their business, or work for gain, within the district of the Court at the time of bringing the action, or who did so dwell or carry on their business, or work therein at the time when the cause of action arose, or within six months before the time of bringing the action for causes of action which arose within the same time."

By section 2, Act XXVI. of 1864, "the jurisdiction of the Courts held, or to be held, under the said Act IX. of 1850, shall extend to the recovery of any debt, damage, or demand exceeding the sum of Rs. 500, but not exceeding the sum of Rs. 1,000, and to all actions in respect thereof, provided that the cause of action shall have arisen, or the defendant, at the time of bringing the action, shall dwell or carry on business, or personally work for gain within the local limits of the jurisdiction of the Court."

From those sections it will be seen that, while in claims for sums under Rs. 500, this Court has jurisdiction only in respect of the defendant dwelling, working, or carrying on business, within the district of the Court, in claims for sums exceeding Rs. 500, this Court has an alternative jurisdiction by reason merely of the cause of action having arisen within the local limits of its jurisdiction, without reference to the place where the defendant may be dwelling or working.

The case now under reference, which, on the face of it, purports to be a suit for the recovery of a sum over Rs. 500, was originally tried by the First Judge of the Court, who found that the plaintiff's cause of action had arisen within the local limits of the Court's jurisdiction.

It was, however, found that the plaintiff was only entitled to recover a sum considerably under R. 500, and that the balance of his claim had been thrown in in order to bring his claim within the extended jurisdiction conferred by section 2, Act XXVI. of 1864, in cases where the cause of action has risen within the local limits of the Court's jurisdiction.

The First Judge also found that the defendant was not subject to the jurisdiction of his Court on any of the grounds set forth in section 28, Act IX. of 1850; and, being of opinion that the case, as being in reality a claim for less than Rs. 500, fell properly within the provisions of that section, held that he had no jurisdiction to try it.

On a motion before two Judges for a new trial, it was contended for the plaintiff that, inasmuch as the amount which the plaintiff sued to recover was over Rs. 500, the case fell within section 2, Act XXVI. of 1864; and that the First Judge was wrong in holding that he had no jurisdiction to try it. In